

The Independent Review Panel (IRP)

Final Draft Report

On

The Free Trade Area of the Americas (FTAA) Inquiry

Jorge E. Reynardus, Esq., Chairperson

**Civilian Oversight of
Miami-Dade Police and
Corrections & Rehabilitation Departments**

June 2004

Panel Members

Jorge E. Reynardus, Esq., Chairperson, nominated by the Community Relations Board. Mr. Reynardus is a Senior Associate at Holland and Knight LLP where his practice focuses on commercial and international litigation. He is an attorney ad litem and works with the National Center for Missing and Exploited Children and Lawyers for Children America.

John W. Thornton, Esq. 1st Vice Chairperson, nominated by the Dade County Bar Association. Mr. Thornton is a partner at Thornton & Rothman, P.A., practicing in the area of federal and state criminal defense. He is a former Assistant State Attorney. Mr. Thornton was named as a Top South Florida Attorney by the 2001 and 2002 Miami Metro Magazine Legal Guide.

Rev. James Phillips, Jr., 2nd Vice Chairperson, nominated by People United to Lead the Struggle for Equality (PULSE). Rev. Phillips is pastor of the Highland Park Baptist Church and past president of PULSE, a civil rights group established in 1981. He has a B.A. in psychology with an emphasis on chemical dependency.

Sandra A. Antor, RN, BSN, nominated by the Black Affairs Advisory Board. Ms. Antor is of Haitian heritage. She is dedicated to her community and her church, and has volunteered on medical mission trips to Haiti. She works as a registered nurse at a local community hospital. Her interests are civilian oversight of law enforcement and conflict resolution.

Julia Dawson, Esq., nominated by the League of Women Voters. Ms. Dawson is an advocate committed to securing the human rights of all people. She was Fundraising Coordinator for SAVE (Safeguarding American Values for Everyone) and works as a Pro-Bono Mediator for the Miami-Dade Equal Opportunity Board.

Joseph Lopez, Esq., nominated by the Puerto Rican Bar Association. Mr. Lopez practices general law. He is Chairman of the Puerto Rican Chamber of Commerce of South Florida and a founding member of PROFESA, the Puerto Rican Professional Association of South Florida.

Chief John S. Ross, nominated by the Dade County Association of Chiefs of Police. Chief Ross serves as Chief of the Bay Harbor Islands Police Department. He also sits on the Miami-Dade Community College School of Justice and Safety Administration Advisory Board.

Doris Shellow, non-permanent member. Mrs. Shellow was an active Panel Member for many years. She now serves as an alternate. Mrs. Shellow was Executive Director of the South Florida Psychiatric Society for 17 years, until she retired in 2000.

Moiez A. Tapia, Ph.D., nominated by Asian American Advisory Board. Dr. Tapia is a professor in the Electrical & Computer Engineering Department of the University of Miami. Dr. Tapia served as Chairman of the Islamic Center for many years. He is currently a member of the Board of Directors of the Urban League of Miami and a member of the Jew Arab Dialogue Association.

Staff Members

Eduardo I. Diaz, Ph.D. , Executive Director. Dr. Diaz is a peace psychologist who actively advocates for improved police/community relations and a variety of other violence reduction efforts.

Carol J. Boersma, MSW, Executive Assistant to the Director

Sagrario Lopez, BA, Senior Executive Secretary

Duhamelle Desire, MPA, Conflict Resolution Specialist

Linda Pierre, MPA, Conflict Resolution Specialist

Table of Contents

| | |
|---------------------------------------------------|----|
| Executive Summary | 1 |
| Background | 1 |
| Findings | |
| Police Training, Organization and Deployment..... | 2 |
| Use of Force | 6 |
| Prisoner Processing | 7 |
| Labor Community Concerns | 10 |
| Recommendations | 11 |
| Public Hearings | |
| Police Training, Organization, Deployment..... | 13 |
| Use of Force | 20 |
| Prisoner Processing | 31 |
| Labor Community Concerns | 38 |
| Appendices | 51 |

Executive Summary

Findings and Recommendations

Background

The Independent Review Panel (IRP) is a mechanism for external community fact-finding and dispute resolution. The nine volunteer Panel Members conduct independent reviews and hold public hearings concerning serious complaints against Miami-Dade County Departments.

The IRP conducted multiple public hearings and fact-finding meetings regarding the actions of the Miami-Dade Police Department and the Miami Dade Corrections and Rehabilitation Department during the FTAA ministerial. Panel members listened carefully to all sides. The IRP review included extensive reading of after-action reports and news media articles as well as the viewing of video and photographic evidence provided by demonstrators and the Miami-Dade Police Department (MDPD).

People who came to downtown Miami from November 18th to the 21st, 2004 experienced an unprecedented police presence that elicited citizen commentary ranging from celebration of “The Miami Model” of Law Enforcement preparation for large scale demonstrations to complaints of overreaction representing a “Police State.”

The Panel commends MDPD and various civilian groups that helped us by providing testimony. MDPD cooperated with civilian oversight at every stage of this investigation. The exception being that MDPD Operational Plans were not provided based on a public records exemption found in Chapter 119.07(3)(d), which reads in part: “any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies... are exempt... [from production]”

The IRP and the City of Miami’s Civilian Investigative Panel (CIP) conducted an historic joint meeting on January 15, 2004 and shared information throughout the period of inquiry. The IRP expresses gratitude to all the demonstrators and police personnel who stepped forward to do their civic duty and contribute evidence for consideration. The IRP findings and recommendations are the product of a deliberate and thorough review of all the available evidence.

It is important to note that the vast majority of MDPD officers acted honorably, commendably and with considerable restraint. The IRP commends those police departments and police officers who wisely limited their use of force to situations where all alternatives had been exhausted. There is the honor of preserving those values which we cherish. Most importantly, we extend our heartfelt apologies to the visitors who came to our city to peaceably voice their concerns, but who were met with closed fists instead of open arms.

The members of the Independent Review Panel strongly condemn and deplore the unrestrained and disproportionate use of force by various police departments in Miami during the FTAA. Nationally televised images of police violence against non-violent protesters stained our community. For a brief period in time, it appeared as if Miami was a “police state”. Civil rights were trampled and the socio-political values we hold most dear were undermined. The right of every citizen to publicly proclaim their approval or disapproval for the actions of their elected leaders in a peaceful manner lies at the heart of what it means to be an American. The curtailment of that right is the first step from freedom towards bondage.

It is important to note that the Miami-Dade Police Department only used less-lethal munitions two times during the FTAA week. The internationally publicized pictures of police deploying gas and shooting less-lethal weapons at non-violent protesters were not pictures of Miami-Dade Police Department officers.

The readers who are interested in whether constitutional rights were violated are directed to track civil rights litigation that has been filed in the federal courts, available for review on the internet. The findings and recommendations that follow are focused on the areas within the jurisdiction of the Independent Review Panel an advisory body mandated to do “external community fact-finding and dispute resolution” with the aim to have a constructive impact on relevant County policy and practice.

The volunteers that serve on the IRP offer Miami-Dade County government the following citizen oversight of law enforcement in the spirit of constructive conflict management focused on the County’s vision and improvements in “Delivering Excellence Every Day.”

Findings

Police Training, Organization and Deployment

1. There was no “Unified FTAA Command.”

Approximately 40 law enforcement agencies participated in the FTAA law enforcement operations. The City of Miami Police Department (Miami PD) was the lead law enforcement agency. MDPD did not cede command to the Miami PD or any other command, instead MDPD responded to Miami PD requests.

2. **The downtown area was divided into geographical command areas** with primary responsibility assigned to specific law enforcement agencies:

North – Miami-Dade Police Department (MDPD)

NE 4 St to NE 12 St. (Under I-395); from the Bay to I-95. MDPD and Miami PD overlapped from NE 4 St. to NE 6 St. The MDPD area included the port and the AAA Arena.

Central – Miami Police Department (Miami PD)

NE 4 St. south to the Miami River and from I-95 east to Biscayne Bay

South – Florida Highway Patrol (FHP)

South of the Miami River - the Brickell Financial Corridor and the I-95 and I-395 interstates.

Bayside Marketplace – Hialeah Police Department.

Broward Sheriff's Office (BSO) was "utilized as a Reactionary Field Force and was only deployed with direct orders from the Joint Law Enforcement Operating Center (JLC)."

Approximately 35 other federal, state and local law enforcement agencies were also part of the joint FTAA security operations. Miami PD supervised the work of several "partner" police agencies. The Miami Civilian Investigative Panel (CIP) is investigating the actions of Miami PD.

3. **The vast majority of MDPD personnel performed their duty without incident and conducted themselves in a professional manner under trying circumstances.**

MDPD officers spent long hours in special gear waiting to be called into action and generated a small number of individual citizen complaints. That may be due, in part, to some groups urging citizens not to file complaints with the IRP or CIP. At the January 15, 2004 joint CIP-IRP meeting MAD stated, "As such, Miami Activist Defense [MAD] has encouraged people with pending criminal charges or contemplating civil rights claims to not file complaints with either the IRP or the CIP."

4. **Extensive pre-FTAA ministerial training was conducted with emphasis on preparation for violent protesters.**

MDPD spent 40,000 "work hours" preparing for this event yet the training materials in the After-Action Report document little pertaining to the protection of citizen rights of free expression. A document entitled "FTAA Training for Task Force/Field Force Commanders," dated November 7, 2003, identifies 20 items relating to legal matters. Demonstrators' rights are not one of the issues.

5. The police were trained to address massive civil disturbance.

According to the After-Action Report, intelligence indicated some groups might attempt to “violently disrupt the FTAA conference and cause damage to both private and public property,” as well as “overrun and occupy government buildings.” Police anticipated “mass arrests.” There were no massive disturbances. There were two disturbances that resulted in large number of arrests and several smaller incidents.

6. Media coverage and police preparation emphasized “anarchists, anarchists, anarchists.”

The quote is from Major Battle, the MDPD incident commander for the FTAA event, who expressed a determination not to fail in the protection of innocent citizens and accepted responsibility for the MDPD operational plan design and execution. The emphasis on anarchists contributed to a police mindset to err, when in doubt, on the side of dramatic show of force to preempt violence rather than being subject to criticism for avoidable injury and destruction based a reserved presence of police force.

7. The police were prepared to address potential terrorist activity and Weapons of Mass Destruction (WMD).

The Panel found no evidence of terrorist activity or that WMD’s were actually found during FTAA week, but the possibility was a substantial factor in preparations for the FTAA event.

8. Only government lawyers were used in MDPD training and on-the-scene consultations with the police during the event.

The lack of involvement of volunteer lawyers from the private sector or civil-liberty-focused organizations may have contributed to questionable dispersal orders or their execution.

9. Captain Rasmussen testified that officers were trained to address problem individuals in crowds and to isolate them.

MDPD dispersed the peaceful demonstration outside the jail on November 21, 2003 because police officers observed two demonstrators collecting rocks. A police photograph shows a young man with a box, wearing a T-shirt with the number 37 on the back. In this case, MDPD chose to address all the demonstrators rather than the “problem individual.”

10. The overwhelming riot-clad police presence, when there was no civil disturbance, chilled citizen participation in permitted and lawful demonstrations and events.

Some described Miami as a “police state.” Rev. Dr. Donna Schaper testified that police in riot gear blocked access to an ecumenical worship service at the First United Methodist Church on November 18, a time when no demonstrations were occurring.

11. MDPD officers in “riot gear” had no visible name or number identification, hindering accountability via citizen complaints.

Given that there were about 40 different law enforcement agencies involved, citizens found it difficult to identify individual police officers or their departments. The proper identification of police officers is essential for public accountability.

12. The IRP received 27 complaints about police actions during the FTAA events.

Most individual complaints were generic grievances that failed to identify a particular wrongdoer, which may be explained by the lack of individual police identification. Four complaints were referred to MDPD or C&R for Internal Affairs investigations of specific allegations. These complaints will follow the regular IRP process, which included a Dispute Resolution and Fact-finding committee meeting prior to public hearing.

13. MDPD prioritized the safety of people in the area and the security of the Seaport over the protection of Amnesty International’s right to public protest.

An Independent Review Panel committee considered the complaint of Amnesty International, that MDPD blocked access to its permitted demonstration at the Torch of Friendship on the morning of November 20, 2003. The Police lines created by Miami-Dade and Hialeah Police Department in response to the violence occurring on Biscayne Blvd. and the northward movement of violent protesters did interfere with access to the Amnesty International demonstration. The police lines were opened and closed throughout the day in reaction to what was happening on the streets. MDPD did not close their lines to prevent access to the Amnesty International demonstration. The Police focused on the security of the Sea Port and Miami PD reports of a violent crowd moving north.

14. MDPD assumed responsibility for all closures of Metrorail and Metromover stations, and service suspensions.

MDPD made these decisions based on reports of bomb threats, fires and reports of violent crowds from Miami PD.

15. Jail Protest on November 21, 2003:

- a. **Insufficient time to disperse was given to some demonstrators arrested following the Jail Protest Demonstration.** Video tapes document individuals being arrested even though they began to disperse prior to the 2 minute deadline announced by megaphone.
- b. **Seventeen jail protesters were arrested three or more blocks from the site of the two-minute dispersal order and charged with unlawful assembly.**

- c. **Police testimony that the decision to arrest jail protesters was predicated by the actions of protesters who “rushed back toward the police” after the dispersal order was given is not substantiated by video evidence.** Video tapes provided by the demonstrators and MDPD show police officers cutting off the departing protesters and backing them up.

- 16. **The MDPD Operational Plan was not made available for review** to assess the extent to which it was designed to protect the rights of citizens to exercise their first amendment rights.

A national broadcast of *Now with Bill Moyers* addressed “the criminalization of dissent” as an issue during the FTAA police actions and, without access to the undisclosed MDPD or Miami PD Operational Plans, it is not possible to evaluate thoroughly this concern.

- 17. **The expense for the multi-agency FTAA law enforcement response is estimated to exceed \$24,000,000, an amount much higher than the reported \$8,500,000 in Federal funds available for reimbursement from the funds dedicated for the war on terrorism.**

The Miami Herald itemized costs for different agencies that indicated that MDPD expenses were much higher than that of Miami PD, the designated lead law enforcement agency for this event.

Use of Force

- 18. **MDPD rarely used force during FTAA demonstrations; it only reported two uses of less-lethal weapons, specifically a “pepper spray” canister and “pepperball” munitions.**

Both occurred on the afternoon of Friday, November 21, 2003 during the jail protest arrests.

- 19. **The two use of force reports did not conform to established standard operating procedures (SOP) or more recent policy directives.**

One reported deployment of a pepper spray canister, which occurred without exhausting more reasonable means to control. The second occurred when there was an initial failure to complete a “Use of Force to Control Report” on the deployment of three rounds of pepperball munitions.

Prisoner Processing

20. There was no systematic problem with prisoner processing by MDPD or C&R.

Most prisoners were processed at the FTAA prisoner processing site located at the Earlington Heights Metrorail station. The Miami PD and MDPD had independent processing sites at opposite ends of this same location. Miami PD used their facility to process those arrested by its partner agencies. A few of those detained complained about handcuffs that were too tight during prisoner processing. No one filed a complaint with MDPD or Corrections during actual detention; however some complaints were filed after the fact.

21. The IRP received no direct testimony of sexual abuse.

An allegation of sexual abuse during prisoner processing was raised at more than one public meeting by the same person, but could not be investigated due to lack of direct testimony.

22. An eyewitness statement documents that some arrested demonstrators were subjected to improper post-arrest procedures.

There is testimony that officers left arrestees' property on the street, a violation of MDPD Departmental Manual 18-02.5.I: "Personal property...shall be transported with the prisoner..." and violation of the FTAA Property Policy which states: "Prisoner property and evidence will be transported to the [Prisoner Processing Site]PPS." The IRP referred a complaint, in which abandonment of prisoners' property is an allegation, to Internal Affairs for investigation.

23. Arrestees were handcuffed from the time they were arrested until they were secured in Corrections Facility.

That included time at the arrest site, the time in transport to the prisoner processing site, time at the prisoner processing site, and the transport to the jail. Some arrestees provided testimony of being handcuffed for more than eight hours.

MDPD policy states that: "Handcuffs shall not remain on prisoners for unreasonable periods of time, i.e., when prisoners may be otherwise properly secured." There is no C&R policy that addresses the length of time a prisoner may be handcuffed. MDPD staff testified that handcuffs were temporarily removed when prisoners had to sign papers or use the restroom. Corrections staff testified that handcuffs were removed once in the actual jail.

24. Some prisoners may not have had access to restroom facilities or water at the Prisoner Processing Site.

Two detainees arrested by Broward Sheriff's Office (BSO) reported they were not provided water and restroom facilities until they reached the jail about 8 hours after being arrested. Both recalled that a man named "Ricky" soiled himself after begging for medical attention for pain in his shoulder. MDPD and Corrections staff indicated no knowledge of the event and stated that water and toilets were available when requested.

25. Neither MDPD nor Corrections have a written policy addressing transport of chemically contaminated detainees.

Some arrestees contaminated with pepper spray may have been transported with non-contaminated arrestees.

26. Most of those arrested by MDPD were from outside the State of Florida.

About 82% of the MDPD arrest forms reviewed indicate arrestees were not from Florida.

27. There is no support for the statement found in the MDPD After-Action Report that: "The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site."

This quote is from the MDPD After-Action Report Executive Summary, Page 6. No one from MDPD or Corrections has since acknowledged such policy or practice. C&R Acting Director Charles McRay stated that he was unaware of the basis for the quote.

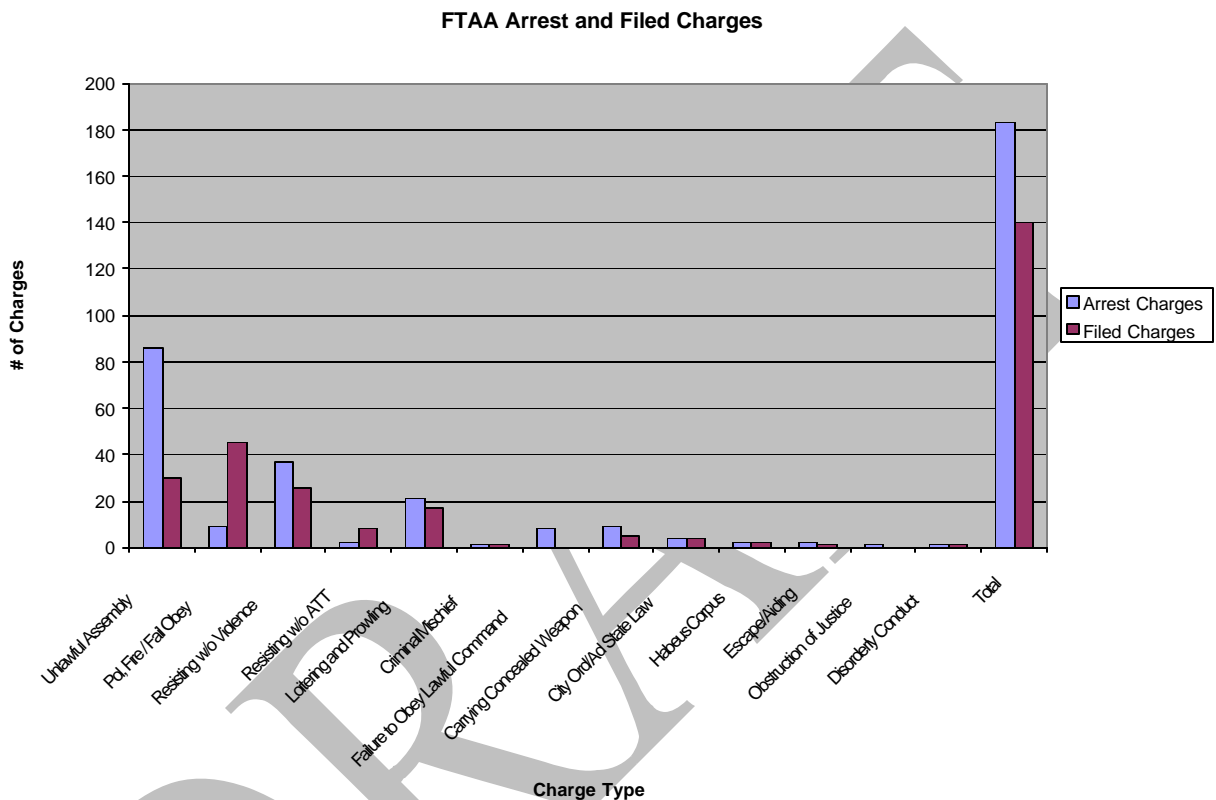
The Administrative Office of the Courts responded to an inquiry about the statement by saying that the Court increased the number of bond hearings "to process arrested demonstrators in a timely fashion, rather than delaying their ability to quickly return to the conference site."

28. All media personnel were not treated equally, some being subject to selective arrest and others not.

Video tapes provided by a demonstrator and MDPD, of Friday afternoon arrests, document someone saying "she's not with us" immediately prior to the arrest of an independent media person not employed as embedded media.

29. Most arrest charges were dropped by the State Attorney's Office.

The MDPD After-Action Report states, "...most arrests made by MDPD officers resulted in probable cause findings by judges." Staff looked at 133 MDPD arrests made during FTAA week, resulting in 183 arrest charges and 140 charges officially filed by the SAO.



The following information regarding the 133 arrests was taken from the Criminal Justice Information System on 6/8/04:

| Nolle Prossed by SAO | Acquitted by Court or Jury | Deferred Prosecution Program | Dismissed by Court | Withheld Adjudication (Plea) | Pending | Incomplete Record |
|----------------------------|----------------------------------|------------------------------------|-----------------------|------------------------------------|---------|----------------------|
| 69 | 7 | 13 | 2 | 16 | 17 | 9 |

30. The State Attorney's Office has not provided a breakdown of dispositions.

Miami Activist Defense (MAD) at www.stopftaa.org/legal reports few convictions. This website contains a copy of a pending civil rights lawsuit filed by the National Lawyers Guild (NLG).

Labor Community Concerns

- 31. There were specific plans for the disembarkation and embarkation of AFL-CIO and Florida Alliance for Retired Americans (FLARA) bus passengers.**

Prior to FTAA week, AFL-CIO representatives met with representatives from the City of Miami, to plan for AFL-CIO and FLARA demonstrations and bus routes. These plans were verbal agreements with Miami police officials and were not communicated to MDPD, as expected by the AFL-CIO.

- 32. MDPD and Miami PD had some streets blocked before and after the AFL-CIO march, causing major confusion with the AFL-CIO and FLARA buses.**

Florida Highway Patrol had control of I-95 and I-395 and some buses could not exit these interstates in the downtown area. MDPD did not block exits from I-95 or I-395, however, MDPD and Miami PD did have some downtown streets blocked due to violent protesters at the time the buses were trying to reach the amphitheater. As a result, some seniors had to walk long distances to arrive at the amphitheatre site, some buses were turned away and returned home, and others went back and forth trying to find a place to unload passengers.

- 33. MDPD did not intervene in the Broward Sheriff's Office (BSO) arrests of non-violent protesters who were following MDPD directions as to where they could and could not walk.**

Two FLARA members were arrested by Broward Sheriff's Office (BSO) while walking along the railroad tracks as a result of following the directions of MDPD officers. MDPD Lt. Robert Brown had a "discussion with the BSO officers, but did not interfere with their arrests."¹

- 34. The police response was successful in protecting the FTAA ministerial from disruption but was not successful in protecting the anti-FTAA peaceful demonstrations from being disrupted.**

MDPD did not give the same consideration to the protection of demonstrators civil rights as it did to the protection of the FTAA ministerial. There was no balanced consideration of duty evident in police deployment of forces. Actions to show police preparedness to protect the ministerial from attack were more evident than actions to protect committed peaceful protesters from police actions that would limit the constitutionally protected peaceful protest.

¹ Quoted from MDPD Legal Advisor Tom Guilfoyle's April 21, 2004 letter to the IRP.

Recommendations

1. That MDPD identify and commend those officers and supervisors who performed their duty with distinction, upholding the departments mission statement at all times when faced with taunts and obscenities by misbehaving protesters.
2. That MDPD commend Thomas Guilfoyle, Esq., Police Legal Advisor, and Major Louis A. Battle for outstanding commitment to improved police/community relations, based on their performance before concerned citizens on the occasion of multiple IRP committee meetings and public hearings.
3. That MDPD assure citizens for future events that there is one unified command and control system, where every agency involved knows what the others have as assets in the effort, and where every agency is committed to a common goal: protection of people, property and constitutional rights.
4. That MDPD develop training materials, for large demonstration preparation, that proactively address protesters' constitutional rights and encourage officers to enhance trust in government by engaging visitors with respectful treatment that is balanced.
5. That MDPD, when preparing for events such as this one, seek pro-bono legal training and consultation assistance from local bar association volunteers to assure that constitutional rights preparation is done by private sector attorneys.
6. That MDPD participate in coordinated field force drills and training with other involved law enforcement agencies, at the same time and place, to assure that independent actions are limited and a joint operational plan is executed.
7. That MDPD be as concerned with the protection of lawful demonstrations from disruption as with the protection of the subject event from disruption.
8. That MDPD refrain from using officers in riot gear as a show of force when there is no aggressive or violent protest action eminent in the immediate area.
9. That MDPD clearly mark police armor and tactical uniforms so that every individual officer is identifiable from a reasonable distance and can be held accountable for his/her actions.
10. That MDPD establish specific standards pertaining to the execution of dispersal orders, with sample deadlines in minutes, to insure that police movements that may result in arrests do not compromise prosecution of those who violate the order.

11. That MDPD revise policy and practice:

- To insure that every less-lethal munition issued by the MDPD armory is accounted for, whether or not it is used.
- To re-emphasize the pre-existing policy that all use of less-lethal weapons, including “pepper spray,” occur only after all reasonable alternative actions have been exhausted.
- To spell out examples of when less-lethal weapons may be utilized without specific authorization of the on-scene commander.
- To use the court dispositions of FTAA arrests in training, to insure that officers *only* arrest individuals they have observed committing a crime, and not individuals simply in the vicinity of an illegal activity.

12. That the Corrections & Rehabilitation Department revise policy and practice:

- To effectively set a standard as to the length of time a prisoner may be handcuffed, and
- To monitor assurance that water and toilet opportunity has been offered.

13. That MDPD specifically train officers in how to respond if they observe another officer, including anyone from another agency, take inappropriate action against lawful demonstrators.

14. That MDPD create a media policy which provides equal treatment for affiliated and independent media.

15. That the details of agreements made between a citizen group and a specific department be shared with all those in command of areas which are impacted by the agreements.

16. That MDPD take the initiative in communication with protester organizations and coalitions so that MDPD understands protester expectations based on negotiations with other police agencies.

17. That MDPD acquire the Long Range Acoustic Device (LRAD) and train Field Force commanders to communicate emergency information and contingency actions required of demonstrators and observing public.

18. That MDPD design Field Force training scenarios, utilizing the Amnesty International FTAA experience, that would protect the law abiding in permitted demonstrations from violence in a matter that does not disrupt the planned peaceful demonstration.

POLICE TRAINING, ORGANIZATION AND DEPLOYMENT REPORT

Department Reviewed: Miami-Dade Police Department

Committee Meeting Date: February 13, 2004

IRP Discussion Date: March 24, April 22, and May 27, 2004

Committee: IRP Members: Joseph F. Lopez, Esq., Committee Chairperson; Jorge E. Reynardus, Esq.; Chief John S. Ross; and Julia Dawson, Esq. IRP Staff: Eduardo I. Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; and Duhamelle Desire, Community Affairs Specialist.

Present: MDPD: Captain Steve Rasmussen, Lieutenant Bruce Nelson, Major Tony Galindo, Captain Don Kausal, Robert Knabe, Miami Dade Police Department MDPD, Legal Advisor.

Audience: Steven Wetstein, Amnesty International, Miami.

Media: Jeffrey Keating, FSTU/IMC; Al Crespo, Photojournalist.

The discussion was focused on Police Training, Organization and Deployment during the Free Trade Area of the Americas (FTAA) Ministerial conference.

Who was in charge of Police Operations during the FTAA Ministerial?

There was no unified FTAA Command.

MDPD Captain Steve Rasmussen responded that the Miami-Dade Police Department covered a geographic area from 4th street to I-395, the bay to I-95, and other areas such as the Government Center, Vizcaya, Metrorail, Metromover, and courthouse. The City of Miami along with its partners covered from 4th Street south. MDPD participated at the request of the City of Miami but worked independently of City of Miami. There was constant communication, however.

The MDPD Incident Commander was Chief Randy Heller, who reported to the MDPD director. The Field Commander was Major Lou Battle. Captain Rasmussen stated that he was not aware of any specific FTAA agreements among police departments; however prior mutual cooperation agreements were in existence.

The comment was made that the community needs to have an understanding as to who was in charge because some believe Miami Police Chief Timoney commanded all FTAA police operations, when in fact he was in charge of the City of Miami, municipalities and other entities that partnered with the City. MDPD operated independently, but did respond to City of Miami requests.

Training

What were the pre-ministerial training procedures?

Lieutenant Bruce Nelson elaborated on the MDPD training, which consisted of 40,000 man hours of training, beginning in April of 2003. Task Force and Mobile Field Force Command training was a 3-day session from June 30-July 2 of 2003. There was one 40-hour course for commanders conducted by the Department of Homeland Security, and another 40-hour course that addressed communications, mobile field force formation, crowd dynamics, intelligence, prisoner processing, use of force and legal issues. Mobile Field force training was 16 hours for each mobile field force. There was also Chemical Agent Training and Bike Training. Cut Team training was for dismantling an apparatus demonstrators might use called a Sleeping Dragon.

Supplemental Rehearsal Training was held in downtown areas where the task force would be operating. Captain Rasmussen added that peaceful demonstrations, violent crowds and other types of situations were all part of scenario training.

What was done specifically in training to address the First Amendment rights of demonstrators?

Captain Kausal responded that all trainings addressed demonstrators' rights. A document entitled "FTAA Training for Task Force/Field Force Commanders," dated November 7, 2003, identifies 20 items relating to legal matters. Demonstrators' rights are not one of the issues.

Was training focused on a "worst case" scenario?

Training focused on a variety of scenarios, including "worse case" scenarios.

Were there training strategies aimed at isolating the violent from the peaceful, or did MDPD train to react to the crowd in general?

Captain Rasmussen responded that when a specific situation takes place in a crowd, officers address the individual involved. There is a specific tactic to isolate the problem from the crowd and specific tactics on how to deal with large crowds.

Captain Kausal explained that MDPD tries to identify the perpetrator. If the individual cannot be identified, then MDPD will proceed in lines.

Is there any additional training that MDPD officers should have received or could benefit from for future events like the FTAA?

Captain Rasmussen stated that there have been several committee meetings discussing future outcomes although he has not been part of them. He can't elaborate on findings.

Deployment

MDPD had a tactical operations center at the AAA arena under the command of Major Louis Battle. Representatives from other jurisdictions were present. There were a total of 12 field forces: 8 standard field forces with 64 officers each, 4 enhanced field forces of 84 officers each, 4 mobile forces of 60 officers each, 2 special events response team of 30 officers, and a bike squad of 40 officers.

What orders were issued to MDPD in terms of reacting to the crowd?

Captain Rasmussen replied that Field Force units were under the command of lieutenants. Officers were instructed to be tolerant, to try to identify protest leaders and negotiate with them.

How did MDPD communicate dispersal orders?

Captain Kausal stated that orders were communicated through megaphones. Megaphones could be heard from 20-30 feet. Captain Rasmussen added that there was also equipment on loan called LRAD. It was a good device that could project sound, very expensive and never used by the department. The City did not request use of the equipment and may not have known it was available. The equipment was not used by MDPD Friday afternoon because it was returned that morning.

Who decided to corral demonstrators on Thursday?

The City of Miami Incident Commander Deputy Chief Fernandez was responsible for the decision to move the demonstrators with Field Forces.

Was dramatic show of force a planned strategy?

Captain Rasmussen responded that MDPD used that strategy only when necessary. When the Immokalee Workers groups marched south on Tuesday, armored officers were deployed due to intelligence reports of a planned Bayside gate penetration attempt.

What was the policy regarding individual identification of police officers in riot gear?

Captain Rasmussen explained the riot gear was new and they only thought to insure identification of those in command of the Field Forces and other designated units.

Al Crespo expressed surprise of the lack of consideration for all officers to be readily identifiable given it has been an after action issue in other cities.

Metrorail and Metromover Stoppage

Why was service stopped?

Captain Rasmussen replied the Metrorail and Metromover were stopped briefly 2-3 times during the week for different reasons such as a bomb hoax and violent groups congregating.

Who ordered service stopped?

Major Battle made the decisions.

Undercover Activity

What was the extent of undercover activity?

Captain Kausal stated that MDPD had officers in plainclothes on the street to observe and relate information to command personnel. MDPD also used civilian "sources." MDPD officers were not assigned to attend meetings of church groups.

Were "provocateurs" utilized?

Captain Rasmussen responded that MDPD did not use undercover police officers to provoke incidents.

The protest outside the main jail on Friday

Captain James O'Donnell was the commander of the Task Force.

Captain Rasmussen stated that a group of peaceful protestors were outside the State Attorney's Office and they were allowed to remain in the parking area. However, that changed when intelligence was received that some protestors in the crowd were collecting rocks and planning to assault officers. When the protestors became disruptive and unruly, MDPD gave dispersal orders. Some people did not disperse and were placed under arrest.

The intelligence was based on police observation, however the statement that protestors were "planning to assault officers" is a perceived threat.

How far did the crowd have to disperse?

There was no specific distance required to satisfy a dispersal order. Some arrests were made more than 5 blocks from the dispersal order point.

Can an individual leaving the scene still be subject to an arrest?

Captain Rasmussen stated that it would be at the discretion of the officers to determine if an individual was cooperating or not.

What if everyone didn't hear the dispersal order? There were noisy helicopters in the area.

Captain Rasmussen replied that dispersal orders are exact instructions given by megaphone and repeated over and over. The two minute dispersal order given by Lt. Jeff Schmidinger on November 21, 2003 was clearly audible on videotape provided by the demonstrators.

Was there any rock throwing?

Captain Rasmussen replied not to his knowledge. Al Crespo, who was taking pictures during the incident, stated no rocks were thrown. Arrest affidavits provided to the IRP did not document rock throwing.

Other Matters

Some citizens, including union members, said they negotiated agreements with the City of Miami to protest at specific times and places. **Was MDPD aware of the agreements that had been made between City of Miami, their partners and demonstrators and unions?**

Captain Rasmussen remarked Miami-Dade was aware that negotiations had taken place. Testimony in later committee meetings revealed that MDPD was not aware of all the details of some agreements relating to Thursday, November 20.

Was MDPD involved in the decisions to prevent the passage of busses to the Amphitheatre protest site?

The evidence does not support a decision to block buses, but rather that buses were blocked by MDPD decisions made to place perimeters along certain streets to control protesters.

Would police have been threatened if a map had been published in The Miami Herald showing designated access sites to the protest areas?

Captain Rasmussen responded that traffic routes were published. He did not see a problem with publishing demonstration sites.

MDPD got legal assistance from the MDPD Legal Bureau and the SAO. Did MDPD consider involvement of non-government lawyers from the local Bar Association?

Captain Rasmussen stated there was a legal committee but that question would have to be addressed by the MDPD Legal Bureau.

Did MDPD work with the Miami-Dade CRB in regards to FTAA?

Captain Kausal said he gave a presentation to the CRB.

Are video records made by the police available for the public inspection?

Captain Rasmussen replied yes, all documents of MDPD are public records.

What policy and/or procedures need to change?

The After-Action report documents several MDPD concerns regarding what needs to change and recommendations.

How did MDPD make its decisions about use of chemicals, tear gas and other less-lethal weapons?

The latest Less-Lethal Munitions Policy was approved by the MDPD Director on October 29, 2003 and reads as follows: "It is the MDPD policy to consider the option of Less-Lethal Munitions force technology to overcome resistance to a lawful arrest or apprehension, or for defensive purposes. The actual deployment of Less-Lethal Munitions is "authorized by the Task Force or the MFF Commander at the scene of a MFF operation."

Captain Rasmussen replied MDPD used one pepperball and one use of pepper spray on Friday. Later testimony documented the use of three pepperballs on Friday.

Comments from floor

Al Crespo inquired about the use of predetermined strategy for the dispersal of the protestors Thursday afternoon. Captain Rasmussen replied that there were no predetermined strategies; MDPD just followed orders given by commanders and did respond to requests by the City of Miami to move Field Forces.

Al Crespo also elaborated on residents in Overtown and their concerns about the violent protestors in their area. This created a problem for Overtown citizens because the so-called violent behavior that was created in downtown was now pushed into Overtown. Mr. Crespo stated there are videos where residents state that police went into Overtown and warned residents that protestors would be moving in their direction.

Mr. Crespo questioned whether the driving of demonstrators into Overtown was intentional, as suggested by some media people. He stated that protestors were between 1st & 2nd Avenues for some time and orders to disperse could have directed the crowd to the empty parking lot next to the City parking garage. Here police could have encircled the protesters and prevented them from moving into Overtown.

Steve Wetstein expressed concern about the cordon of Miami-Dade police that was on NE 4th St. and then moved south to NE 3^d St. This cordon prevented many people from attending the Amnesty International event at the Torch of Friendship.

Steve Westein also expressed concerns about the Hialeah Police actions in The Torch of Friendship area. Dr. Diaz replied that the Hialeah Police Department was a City of Miami “partner,” and their actions may have been requested by the city.

Jeffrey Keatings inquired about effectiveness of police training. Captain Rasmussen believed that MDPD training was effective; every officer did an excellent job.

USE OF FORCE REPORT

Department Reviewed: Miami-Dade Police Department (MDPD)

Committee Meeting Dates: February 24, 2004 and March 5, 2004

IRP Discussion Dates: April 22, 2004 and May 27, 2004

Committee: IRP Members: Julia Dawson, Esq., Committee Chairperson, Moiez A. Tapia, Ph. D., Committee Co-Chairperson, Jorge E. Reynardus, Esq., and Chief John S. Ross. IRP Staff: Eduardo I. Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; Duhamelle Desire and Debbie Penha-Cumbermack, Conflict Resolution Specialists.

Present: **MDPD:** Major Louis Battle, FTAA Operations Commander; Sergeant Michael Barry, FTAA Training; Major Tony Galindo, Tom Guilfoyle, Esq., Legal Bureau; Captain James O'Donnell and Lt. Jeff Schmidinger.

Audience: Juanda Ferguson; David Douglas; Nikki Hartman; Jessica Morris; Erick Morris; Noel Cleland; Naomi Fisher; Dr. Donna Schaper, Senior Pastor, Coral Gables Congregational Church; Carol Abia, City of Miami Civilian Investigative Panel (CIP); Ada Rojas and Sam Feldman, Miami Community Relations Board; Steven Wetstein, Amnesty International, Miami; Terry A. Coble, ACLU Greater Miami President Elect; Benjamin Waxman, Esq. and Marc Alain Steier, Esq., National Lawyers Guild; Naomi Archer, Save Our Civil Liberties; Terrance Rothman, Peace Worker of Luke 5 Movement; Rev. Willie Sims, Office of Community Relations.

Media: Raffio Stotlase, Ch. 4 Photographer; John Lang, NBC 6 Photographer; Carolyn Salazar, Miami Herald reporter; Jeffrey Keating, Free Speech TV reporter; Erik Bojnansky, Sun Post reporter.

The discussion focused on Police Use of Force during the Free Trade Area of the Americas (FTAA) Ministerial conference held in Miami. There was testimony concerning two incidents: Protest actions in downtown Miami on November 20, 2003 and protest actions around the jail on the afternoon of November 21. MDPD reported that they used less-lethal weapons only on November 21.

Downtown Thursday Morning

About 9 AM on November 20, 2003, a group of approximately 150 activists gathered at the security fence, located at the south end of Biscayne Blvd., approximately one block north of the Intercontinental Hotel where the FTAA meetings were being held. The Miami PD was monitoring the crowd. MDPD forces were positioned along NE 4th Street.

The MDPD Command Post was receiving information that the activists were hanging signs on the security fence and were going to set them on fire. Some activists threw fireworks; others began to attach ropes and grappling hooks to the security fence. At 9:45 AM Miami PD gave a "gas disperse order," directing the crowd to move north. Within a few minutes Miami PD was deploying pepper spray and beanbags, and pushing the crowd north.

Amnesty International had a permit to hold a demonstration from 10 AM - 2 PM, at the Torch of Friendship (Bayfront Park at NE 3rd Street), about 4 blocks north of the security fence. About 10 AM a group of Hialeah officers, who said they were under the command of Captain Overton, approached the Torch and told the Amnesty group they had to move because a group of protesters was heading toward the Torch. At this time MDPD had a line of officers stationed at Biscayne and 4th Street, blocking access to the Torch from the north. Later the MDPD line moved to 3rd Street by request of Miami PD. Major Battle testified that Miami PD Captain Thomas Cannon asked him to move to Third Street and block the north side of Third in a meeting the night before.

Why was the Amnesty International demonstration at the Torch of Friendship asked to disperse?

There is no evidence that Amnesty demonstrators were asked to disperse, however around 9:40 AM Hialeah directed the Amnesty people who were making preparations at the Torch to move away from the Torch.

According to testimony provided by Hialeah Captain Overton on 5/20/04, Miami PD asked Hialeah to move from Bayside to Biscayne Blvd., because Miami PD was pushing violent protesters north on Biscayne, away from the security fence. Hialeah formed a skirmish line on the east side of Biscayne Blvd. between NE 3 and 4 Streets, to prevent protesters from moving into Bayfront Park. This formation caused the Amnesty demonstration site (Torch of Friendship) to be behind the police line.

Major Battle stated that the City was dealing with demonstrators who had grappling hooks, rocks and bottles and were setting fires on the Boulevard. Major Battle advised MDPD officers that the crowd was being pushed toward MDPD's area, so that MDPD officers would be prepared to ensure the Port remained open.

What permitted and scheduled protest activities did police deployment prevent or interfere with?

Steven Wetstein, representing Amnesty International Miami, complained that Amnesty International had scheduled a permitted demonstration at the Torch of Friendship and access to the demonstration was blocked by the deployment of the police forces. Mr. Wetstein stated MDPD set up a cordon on NE 4th St. and later another cordon on NE 3rd St., which prevented protesters from attending the Amnesty International demonstration at the Torch.

The operations log reveals that at 10:12 AM the City requested that MDPD move from 4th to 3rd Street. Whenever MDPD received information that Miami PD was battling a crowd, as it was in this instance, MDPD would shut down its area. Pedestrians and motorists would be let out of the area, but not into the area. Major Battle stated that Amnesty demonstrators could have come down 1st Avenue, 2nd Avenue or 3rd Street to get on the Boulevard.

What was the Tactical Plan to Address the Activists?

Major Battle said the Miami PD-MDPD tactical agreement was that Miami would push violent demonstrators north on the Boulevard to 3rd Street and then west. They did not want to push them down Flagler, 1st or 2nd because there are a lot of businesses in that area. MDPD would be the northern buffer on 4th St. In order to ensure the safety of everybody in the area, Major Battle set up a perimeter. Once the City regained control, MDPD moved back to the AAA Arena.

On 5/20/04 Hialeah Captain Overton testified that there were meetings with MPD and MDPD the night of November 19th, because there was intelligence information that an illegal demonstration could occur as early as 5 AM the following day. There were several contingency plans:

1. There was a plan that would have allowed for non-violent protesters to march along Biscayne Blvd and turn west at 3rd or 4th Streets.
2. There was a plan for the unpermitted protesters to be blocked between Biscayne Blvd. and 1st Ave., and taken into custody by Miami PD and other field forces.
3. There was a plan that, if protesters attacked the fence or committed other illegal acts, Hialeah would move to the amphitheater and MDPD would move south to 3rd St.

Dr. Diaz read the following from the Command Post Log:

9:41 Intel advises that when the city disperses that they will deploy gas.
9:41 Major Battle advises they have to give us warning so that we can mask up.
9:42 On northeast 4th and Boulevard, standing by.
9:42 We are advising Hialeah in Bayside.
9:43 Metromover now shut down.
9:44 Hialeah to deploy, moving crowd westbound.
9:45 City giving gas disperse order now.”
10:12 City req we move from 4th down to 3rd St.

What caused the demonstrators to move into Overtown?

The City of Miami After-Action Report indicates that Miami PD considered “corralling” protesters to a parking lot to initiate mass arrests, but that didn’t happen. The report suggests “some people were slow to close folks off.”

Miami PD, with the help of BSO, pushed the crowd west to NE 2 Ave. and then north on 2nd Avenue. MDPD held a north lateral line on Third Street and locked down the Boulevard from NE 4 St. to NE 12 St. No traffic was allowed east of NE 2 Ave., Just past NE 2 Ave. and 6 St., a 45 degree line of MDPD officers blocked access north and east. As a result people were driven onto the railroad tracks and toward the Overtown area.

What led to the Thursday afternoon police decision to march down Biscayne Blvd as a closely arranged line of officers? Who ordered it? On what basis?

Based on testimony at the February 5th CIP meeting, the City of Miami Incident Commander, Deputy Chief Fernandez, was responsible for the decision to move the demonstrators with Field Forces, based on observations of demonstrator violence.

Who used less-lethal force on 11/20/04 in the area of the demonstrator clinic?

The evidence reviewed suggests that MDPD was not in that area at that time. The specific involved law enforcement agency was not identified.

Demonstration Outside the Pre-Trial Detention Center (Jail)

On November 21, 2003, about 2 PM, there was a gathering of different protest groups in the parking lot of the State Attorney’s Office (SAO), which is located across the street from the jail, to support protesters who had been arrested. It was not a permitted demonstration; however MDPD Captain James O’Donnell spoke with protest negotiators and agreed to allow a demonstration in the parking lot of the SAO, as well as a press conference at 2:30 PM. Representatives from the SAO agreed to the use of their parking lot. After the press conference about 125 demonstrators remained in the area, some walking along the sidewalk and in the street.

Captain O’Donnell agreed the demonstrators could continue to demonstrate for an hour, from 4-5:00 PM. Some time after 4 PM Major Battle, who was located in the Command Center at the American Airlines Arena (AAA), made the decision to disperse the crowd, based on intelligence reports that demonstrators were gathering rocks and were beginning to move into the street. That intelligence information was not documented in the Command Post Log. More MDPD officers, some in riot gear, began to arrive after 4 PM.

At 4:36 PM, Captain O'Donnell communicated Major Battle's decision with the demonstrator negotiators, giving the crowd three minutes to disband. According to the Command Post Log, "legal gave a 3 min warning. After this time is up—Push them back & start arresting." The negotiators agreed to call for the demonstrators to disperse, east on NW 14th Street. The announcement was made by megaphone and the crowd began to disperse.

The crowd, followed and edged by police officers, began to disperse east on 14th Street. Most of the protesters crossed NW 12th Avenue and proceeded east or north, however six activists sat down on the corner of 14th Street and 12th Avenue in an act of civil disobedience. Many camera people stopped to film the civil disobedience. Many protesters stopped as well, to see what was happening.

Minutes before 5 PM Lt. Jeff Schmidinger, who was standing on 14th Street east of 12th Avenue, gave the formal dispersal order, giving two minutes to disperse east on 14th Street. OC (Oleoresin Capsicum) "pepper" spray was deployed at 5 PM. 83 protesters were arrested, some as far away as NW 9th Avenue and 15th Street.

On March 5, 2004 the committee looked at two videos of the dispersal order given by Lt. Jeff Schmidinger and subsequent arrests made by MDPD on November 21, 2003. One video was taken by a protester and is labeled "Ana Nogueira – November 21, 2003 – Arrest Evidence." The other was provided by MDPD.

The videos show a line of protesters facing west in the 1100 block of NW 14th Street, shouting at the officers. Lt. Schmidinger then gives a two minute dispersal order and the protesters move onto the sidewalk and begin to walk east. A short time later, a line of officers blocks the eastward movement of the protesters and the protesters appear to be forced to back up. They are surrounded by officers and told to get on the ground.

Statement of Naomi Archer

Ms Archer was one of the persons who negotiated with MDPD during the incident. She drew a diagram of the area on the chalkboard.

Ms. Archer stated that she spoke to officers stationed at the jail, the Justice Building and the SAO, informing them that protesters were present for a press conference and a peaceful vigil for demonstrators who were jailed. No one she spoke to objected. The press conference was held in the parking lot about 2:30 PM. After that some people began to walk along the sidewalk. As she was walking, Ms. Archer noticed MDPD officers in riot gear arriving and she asked Captain O'Donnell why he was escalating the situation with a "show of force." Ms. Archer stated that Captain O'Donnell had agreed to the gathering, however he broke his agreement. The officers started to form lines.

Ms. Archer said Captain O'Donnell told her "intelligence" advised that demonstrators were gathering rocks, had wrecked the bathroom in the SAO, and had filled containers with urine and feces. Ms. Archer stated that she and Captain O'Donnell agreed on a 15-20 minute frame for dispersal before officers moved in. They shook hands. Ms. Archer advised the crowd to disperse via megaphone. As activists were dispersing, Captain O'Donnell gave an official order to disperse. People continued to move away and officers started to move in, however a group of six demonstrators decided to use civil disobedience to protest by sitting on the sidewalk.

Statement of Captain O'Donnell

Captain O'Donnell stated that when he arrived on the scene about 2 PM "things were peaceful." Later the protesters moved toward the jail. His three lieutenants met with Naomi Archer and Brenna Bell, another protest negotiator, who advised that they wanted to demonstrate. Even though it was not a permitted event, MDPD set the parameters for the protest: The protesters could not come off the curb on NW 13th nor could they move south of the SAO. The time was set for one hour, from 4-5 PM. At 4:36 PM, reports from the Command Center indicated "privacy groups" were being set up, protesters had gone into the SAO and rocks were being piled up.

At 4:40 PM Captain O'Donnell advised Ms. Archer and Ms. Bell that the crowd had to disperse. He requested them to give a three-minute dispersal order and the crowd started dispersing immediately. MDPD officers followed behind.

The crowd stopped in the 1100 block of NW 14th Street, turned and took a stance. About 5 PM Lt. Schmidinger declared over the megaphone that the assembly was unlawful and gave a formal dispersal order by megaphone: the crowd had two minutes to disperse east on 14th Street. Most of the protesters followed the order, but some tried to go through a parking lot, so MDPD set up an arrest perimeter and pushed everyone to one area to stabilize the area. People were ordered to the ground and the fence collapsed. Some protesters began to lock arms and kick their feet to avoid being arrested.

The Dispersal

Why were dispersal orders given?

MDPD observers on the ground and in a helicopter provided information that protesters were inside the SAO going through the contents of garbage cans, "privacy groups" were being set up, and rocks were being piled up. Major Battle said both the protest negotiators and the police were beginning to lose control of the crowd.

What technology was used to assure calls to disperse were heard?

Both police and/or demonstrators used megaphones, or bullhorn amplifiers. The dispersal orders given by Lt. Schmidinger on the east of 12th Avenue were clearly heard on videotape supplied by MDPD and protesters. The order is given to move onto the sidewalk and disperse east on 14th St. The video shows protesters standing in a line across 14th street, facing the officers and yelling as the dispersal order is given. The protesters continue yelling as they move onto the sidewalk and begin to walk east.

Did orders to disperse follow established guidelines? What are those guidelines?

A sample dispersal order from a document entitled “Field Force and Task Force Commander’s Handout” reads, in part, as follows: “The following routes of dispersal are available and give the most expeditious routes of dispersal. You have (a reasonable amount of time) minutes to disperse.”

Major Battle stated that the normal time frame is 5-10 minutes; however the situation on November 21 was becoming urgent. There were reports that protesters were gathering rocks. The crowd was starting to move into the street. Five o’clock traffic was building. Major Battle, who was in the Triple A Command Center, made the decision to disperse the crowd and communicated his decision to his staff. Captain O’Donnell, the Task Force Commander, consulted with MDPD legal advisors in the field and decided on the initial three-minute time frame. Lt. Schmidinger communicated a two-minute time frame. Bob Knabe and Bill Monahan were the MDPD legal advisors on the scene.

What dispersal orders were given?

There appear to be two agreements made between the police and the negotiators. The initial agreement to have a vigil and a “First Amendment Zone” in the parking lot of the SAO around 2:30 PM. The second agreement, made after Major Battle made the decision to disperse, was for the negotiators to announce the dispersal decision around 4:36 PM.

About 5 PM Lt. Schmidinger gave another dispersal order from 14th St. east of 12th Ave., in which he directed protesters to get out of the street and disperse east on 14th Street in two minutes. After awhile, Lt. Schmidinger got back on the bullhorn and advised they had 90 seconds remaining.

What is expected to happen by the dispersal deadline?

Captain O’Donnell at first said he expected the protesters to be gone. Later he acknowledged the expectation that demonstrators would begin to disperse.

Was the dispersal time reasonable?

Mr. Feldman, Miami CRB, stated many were trying to disperse and he questioned the reasonableness of the time frames. He does not believe sufficient time was given. The video provided by MDPD shows arrests of people who had begun moving east on 14th Avenue before the two minutes were up.

Who was subject to arrest after the dispersal orders?

Major Battle stated that: “Everybody would be subject to arrest once they violated the order to disperse...but, the arrestees would have been the ones that were most likely obstructing traffic, or continuing to resist the police and not move. The ones that were on the sidewalk and moving along the pre-determined route, had they not been causing something else to warrant their arrest, would not have been arrested.”

According to the police, some demonstrators complied; others violated the dispersal order by turning north or south on 12th Avenue. The Use of Force Report also indicates that orders to “stop resisting arrest” were ignored.

Mr. Guilfoyle explained that anyone who does not comply with the order of a police officer can be charged with “resisting arrest without violence.”

Less-Lethal Weapons

What less-lethal weapons were deployed?

On November 21, 2003, one officer deployed three pepper balls and another deployed a canister of OC spray. Major Battle stated that on Friday afternoon, pepper balls were used against one individual that grabbed an officer’s shield and the OC spray dispensed against two demonstrators. A Use of Force Report should have been written regarding the pepper balls, but was not initially.

Who fired less-lethal weapons?

One MDPD Supervisor’s Report of Use of Force To Control, regarding the use of less-lethal weapons, was generated during FTAA week, and one five months later. The 11/21/03 report documents that Sergeant Carlos Acin deployed a canister of “OC (Oleoresin Capsicum) Spray” against two females, Angela Drobnica and Laura Ripple, “to facilitate compliance so the officers could effect the arrest without injury to the protesters or officers.”

The report dated 4/20/04 documents that Officer Christopher Fabian deployed “approximately three pepperball rounds” at an unknown subject who attempted to grab the officer’s shield.

Were the less-lethal weapons deployed according to policy?

Dr. Diaz read the MDPD Use of Non Lethal Weapons SOP. Major Battle stated that he believes there is a later version. (Mr. Guilfoyle subsequently provided the newer policy, specific to projectile “Munitions,” dated October 2, 2003 and approved 10/29/03. Both the SOP and the newer policy call for a Supervisor’s Report of Use of Force To Control to be generated upon any use.)

The SOP states that “The actual deployment and use of Less-Lethal Munitions will be authorized by the Task Force or the MFF [Mobile field Force] Commander at the scene of a MFF operation.” MDPD testimony is that Sergeant Acin, who was in possession of the OC canister had the authority to make the independent judgment as to when to deploy the canister. However, the reported deployment of the pepper spray canister occurred without exhausting “all other reasonable efforts to control”, given the overwhelming police presence and the close proximity of non-resisting demonstrators that were unnecessarily contaminated.

What were the justifications to fire at people who were fleeing/dispersing?

The evidence does not show that the pepper spray or pepper balls were used against persons who were actively dispersing. The video shows Sergeant Acin spraying demonstrators after officers told them to get on the ground and some had their arms interlocked.

Arrests

What led to the arrests?

Mr. Steier stated that the police encircled the demonstrators and cut them off before the allotted dispersal time. Lt. Schmidinger testified in the trial for Gan Golan that he sent his field forces to begin arrests “approximately one minute and 45 seconds” after the two-minute dispersal order because the crowd “made the overt act to charge back and go west.”

Captain O’Donnell said the protesters moved onto the sidewalk but did not disperse. They stopped; it was an unlawful assembly. The assembly became unlawful when Lt. Schmidinger declared it unlawful. Mr. Guilfoyle later clarified that legally, the assembly “became unlawful when the demonstrators blocked the roadway.”² The decision to send an arrest team was made when the crowd, which had been dispersing east, turned and moved west.

Rev. Sims stated that he arrived after the protesters had moved east of 12th Avenue and he observed a lot of intimidation from the protesters toward the police. Some demonstrators defied the order to disperse. Protesters on the northwest side of the building “rushed back toward the police.” Rev. Sims stated they were not rushing the police, but rather trying to rush past the police back to 12th Avenue. Rev. Sims stated that it seemed like everybody had press credentials and cameras, and those with cameras remained standing when the police told everyone to get down on the ground.

² Quoted from Mr. Guilfoyle’s May 21, 2004 letter to the IRP

The videotapes show several protesters shouting at the officers after the dispersal order is given. The crowd then moves from the street to the sidewalk and begins moving east, away from the police line. Several seconds later, a line of officers cuts off the eastward movement of the protesters and the protesters are seen backing up.

The testimony that the decision to begin arresting protesters was predicated by the actions of protesters, who “rushed back toward the police,” is contradicted by the video evidence. The videotapes do not substantiate the perception that the crowd “rushed back,” but rather that the crowd was “pushed back” toward the police line by other police officers.

83 people were arrested. Most were arrested in the 1100 block of NW 14th St., however some protesters were arrested on 9th Ave. and 15th St. by bicycle officers.

What evidence is there that protesters were gathering rocks on Friday afternoon outside the jail?

MDPD provided the following evidence:

- Affidavits from three police “observers” stationed in the Cedars Parking Garage, attested to two males collecting rocks. One put them in a box and another a yellow plastic bag.
- Pictures of one man with a box.
- Pictures of rocks, bricks and a gas can found on the ground after the fact.

There is no record that weapons were taken from any demonstrator’s person.

Was excessive use of force deployed?

The preponderance of the evidence supports the conclusion that the reported utilization of less-lethal weapons was an unnecessary use of force. The utilization of arrest powers upon demonstrators that were attempting to disperse within a very tight time frame was an unnecessary use of arrest powers.

What Policy and/or procedure need to change?

The evidence suggests that the practice of who is authorized to use less-lethal munitions is not consistent with the SOP. Court dispositions of charges relating to the two-minute dispersal order suggest that the SOP and training related to dispersal orders should be reviewed.

From the Audience

Rev. Dr. Donna Schaper (Senior Pastor at the Coral Gables Congregational Church) testified regarding two specific occasions. The first was Tuesday evening, November 18th. Dr. Schaper was the opening speaker an ecumenical worship scheduled for 7 PM at First United Methodist Church downtown. Dr. Schaper stated that “dozens of men in riot gear” blocked all access to the area of the church. “Hundreds” of people were turned away by the police. She was finally able to get to the church at 8:50 PM. Dr. Schaper said she was deeply offended by police in riot gear that early. Dr. Schaper believes that the police violated a promise not to put on the riot gear until Thursday. Dr. Schaper also believes that officials confused protesters and terrorists; and they confused closing down the city with security. She stated that wearing riot gear when there is no riot is provocative and intimidating.

The second occasion was November 20th. Dr. Schaper stated she was downtown from 10 AM to 4 PM on and personally saw no demonstrators throw anything at police. However she did see police push demonstrators, around 3 PM at the Burger King near the Wolfson Campus. About 3:55 PM she felt the tension rising and decided to leave, however she could not get out because the College Metromover Station was closed.

Nikki Hartman submitted a videotape labeled “Ana Nogueira – November 21, 2003 – Arrest Evidence.” Ms. Hartman stated she would provide the Panel with an article from Laura Ripple, a protester who had her pepper spray contaminated clothes cut off by four male officers.

Naomi Fisher stated that on Saturday, 11/22/04, at about 5 PM, she was driving north on North Miami Avenue when she came behind a group of bicycle officers wearing white shirts and blue shorts. She heard the officers make crude sexual remarks to three young people who were walking down the street. The officers turned onto 23rd Street where the convergence center was located, and made similar remarks to people standing around the center. Ms. Fisher said she would provide the Panel with photographs taken during the incident. Mr. Reynardus responded that the locations and uniform descriptions suggest they were Miami police officers.

Ada Rojas (Miami Community Relations Board) testified that she was not present during the demonstration outside the jail. At that time she was in charge of a permitted event at the Miami Arena where approximately 200 people demonstrated peacefully from 10 AM to 4:30 PM.

Noel Cleland inquired whether the orders to disperse and get on the ground applied to the media. Mr. Guilfoyle replied that they did.

Deborah Dion, (AFL-CIO) asked who in the command center made the decision to block the union buses. She was advised that labors concerns are scheduled for review at a later date.

Erick Morris stated that he was one of 14-15 who were obeying the dispersal order when they were arrested by MDPD “riot police on bicycles” who took pictures with personal cameras.

FTAA PRISONER PROCESSING REPORT

Departments Reviewed: Miami-Dade Corrections & Rehabilitation Department (C&R)
Miami-Dade Police Department (MDPD)

Committee Meeting Date: February 9, 2004

IRP Discussion Dates: February 26, March 24, April 22, and May 27, 2004

Committee: IRP Members: Sandra A. Antor, Committee Chairperson; Jorge E. Reynardus, Esq.; Chief John S. Ross; and Joseph F. Lopez, Esq. IRP Staff: Eduardo I Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; and Debbie Penha-Cumbermack, Conflict Resolution Specialist.

Present: **MDPD:** Major Tom Knigge, Miami-Dade police Department FTAA Commander.

C&R: Chief Ron Kovacs, Corrections & Rehabilitation Department FTAA Coordinator; and Chief Mary Ann Puig, C&R Professional Compliance Bureau

Audience: Steven Wetstein, Amnesty International, Miami; Juanda G. Ferguson.

Media: Rafael Campo – Ch. 7; Rick Morris – Ch. 6; Raffo Ubillus – Ch. 4; Carolyn Salazar – Miami Herald reporter.

The discussion was focused on Prisoner Processing during the Free Trade Area of the Americas (FTAA) Ministerial conference held in Miami. Issues discussed included treatment of detainees, the type and disposition of charges and the relevant contents of the Miami-Dade Police Department (MDPD) After-Action Report.

Prisoner Transportation and Processing Detail

MDPD established the FTAA Prisoner Transportation and Processing Detail at Earlington Heights Metrorail Station (located at NW 22 Avenue and 41 Street) to process persons arrested by MDPD. City of Miami Police Department (MPD) used the same location to process those arrested by all other law enforcement agencies. The process used by MDPD and MPD was not identical, but no one present could specify the MPD process. Prisoner processing was staffed by MDPD and C&R staff from Sunday, 11/16/03 to Friday, 11/21/03. Staffing included approximately 50 MDPD officers of all ranks and gender.

The total number of MDPD arrests processed at the Prisoner Processing Site was 130.

| | |
|---------------------|--------------|
| Tuesday, 11/18/03 | Arrests: 1 |
| Wednesday, 11/19/03 | Arrests: 0 |
| Thursday, 11/20/03 | Arrests: 28 |
| Friday, 11/21/03 | Arrests: 101 |

At the processing site, chain-link fence holding cells were built to hold arrestees until the officers were able to process them. The MDPD prisoner processing included:

- Completing Arrest Forms (A-forms);
- Conducting a complete search of prisoners;
- Removing hats/glasses and/or additional items from prisoners in order to take a photograph of the prisoner; and
- Bagging/packaging prisoners' property.

FTAA Prisoner Processing Commander, Major Tom Knigge, stated that MDPD was located on the west side. Corrections staff was located on the east side, along with the City of Miami Police Department (MPD).

Chief Ron Kovacs, C&R FTAA Coordinator, stated the following: Once arrestees were turned over to C&R at Earlington Heights, C&R conducted its pre-processing prior to transporting the arrestees to Turner Guilford Knight (TGK) Correctional Center. The pre-processing included: review of arrest affidavits; medical screening by Correction's Health Services for injuries and medical needs; securing prisoners' property; and searching for contraband.

The IRP committee raised the following questions and MDPD & C&R representatives responded to those concerns.

Were people handcuffed longer than dictated by policy?

Major Knigge stated that, at Earlington Heights, there may have been instances when arrestees were handcuffed for several hours. Prisoners who alleged that they were handcuffed for eight or more hours likely included time prior to their arrival at the processing site. He added that once at the processing site, handcuffs/flex-cuffs were taken off when arrestees had to sign paper work or go to the restroom, and then placed back on. On occasions, there were complaints that the flex-cuffs were too tight, and the cuffs were either removed temporarily or adjusted.

Major Knigge said that with the exception of juveniles and a few violent prisoners, most of the arrestees were processed at Earlington Heights. Leaders and violent prisoners were transported directly to the County Jail, and juveniles to the Juvenile Assessment Center (JAC).

Chief Kovacs stated that once arrestees were in custody of C&R, the flex-cuffs were removed, due to arrestees having to sign a property receipt. Prior to loading the buses, arrestees were re-cuffed. The arrestees were then transported to TGK for completion of the intake and identification process. Once the intake process at the jail was completed, the arrestees were placed in a regular cell without the flex-cuffs. The processing time at TGK was no more than 45 minutes.

Chief Kovacs stated there is no C&R policy addressing how long a person can be handcuffed, however, the goal is to get arrestees out of the holding cells in 4-6 hours. Chief Kovacs said there was no delay in processing FTAA arrestees at TGK due to the low number of arrests.

Chief Kovacs and Major Knigge said no one complained of employee misconduct while at the processing site or at any of the jails.

Larry Winawer and Bentley Killmon are associated with the Florida Association for Retired Americans (FLARA) and were arrested by Broward sheriff's Office (BSO) about 5 PM on November 20. Mr. Winawer stated that he was handcuffed behind his back for about 7 hours and in front for 5 hours. Mr. Killmon testified he was handcuffed behind his back for 7 ½ hours. A complaint filed on behalf of five Bates College students alleges handcuffing for over 8 hours.

Prisoners were handcuffed from the time they were arrested until they arrived at a C&R Facility. The time included transport from the arrest site to the Earlington Heights Prisoner Processing Center, time in the Processing Center and transport to the C&R Facility, usually TGK. Part of the time arrestees were under the custody of MDPD, and part of the time, C&R. Arrestees were generally kept handcuffed while at the Processing Center, except when using the restroom or signing papers. Since there is a log-in time when arrestees arrived at the processing site, one could track the time on a case-by-case basis. The MDPD After-Action Report addresses intelligence reports that arrestees may use tactics to stall the process, such as changing clothes, hats or glasses with another prisoner before pictures were taken. Some intelligence also suggests some arrestees were encouraged to give false names or no name to complicate the processing.

Were some detainees denied water and the restroom use?

Both Major Knigge and Chief Kovacs replied that to their knowledge, no one was denied water or restroom use while at the processing site and the jails. Major Knigge expressed that there were portable toilets at the processing site and water was available. Both Chief Kovacs and Major Knigge said they were unaware of a complaint about a person being denied restroom use, and as a result, defecated or urinated on his/her person.

Larry Winawer and Bentley Killmon were at the Prisoner Processing Center from approximately 8:30 PM – 12:30 AM. Both recalled that a man named "Ricky" soiled himself after begging for medical attention for pain in his shoulder. Mr. Killmon testified that he was without water for 10 hours and water was not provided until one hour after he arrived at the Turner Guilford Knight Center (TGK.) He saw no one go to the bathroom or drink water while he was at the Prisoner Processing Center.

What evidence exists of alleged sexual abuse?

No evidence of alleged sexual abuse was provided. This allegation was made at more than one public meeting by the same person, who advised that legal counsel advice precluded providing specific testimony.

Were prisoners transported per policy?

Chief Kovacs said to his knowledge, all prisoners were transported in accordance with policy. Ten vans were assigned to pick-up and transport arrestees directly to jail. There is no record of policy violations by MDPD officers involved in detainee transport to the processing site.

Was the property of people arrested dumped on the street and left there?

Major Knigge said that he was not on the street. He was assigned to the processing site. The agreement with C&R was for C&R to transport small property. MDPD had a truck available to transport larger property.

The IRP referred one complaint, in which one of the allegations was that the complainant's backpack was left on the street when she was arrested, to MDPD for investigation. One witness provided a written statement that he picked up the abandoned backpack.

Who is accountable for alleged misconduct and/or policy failure?

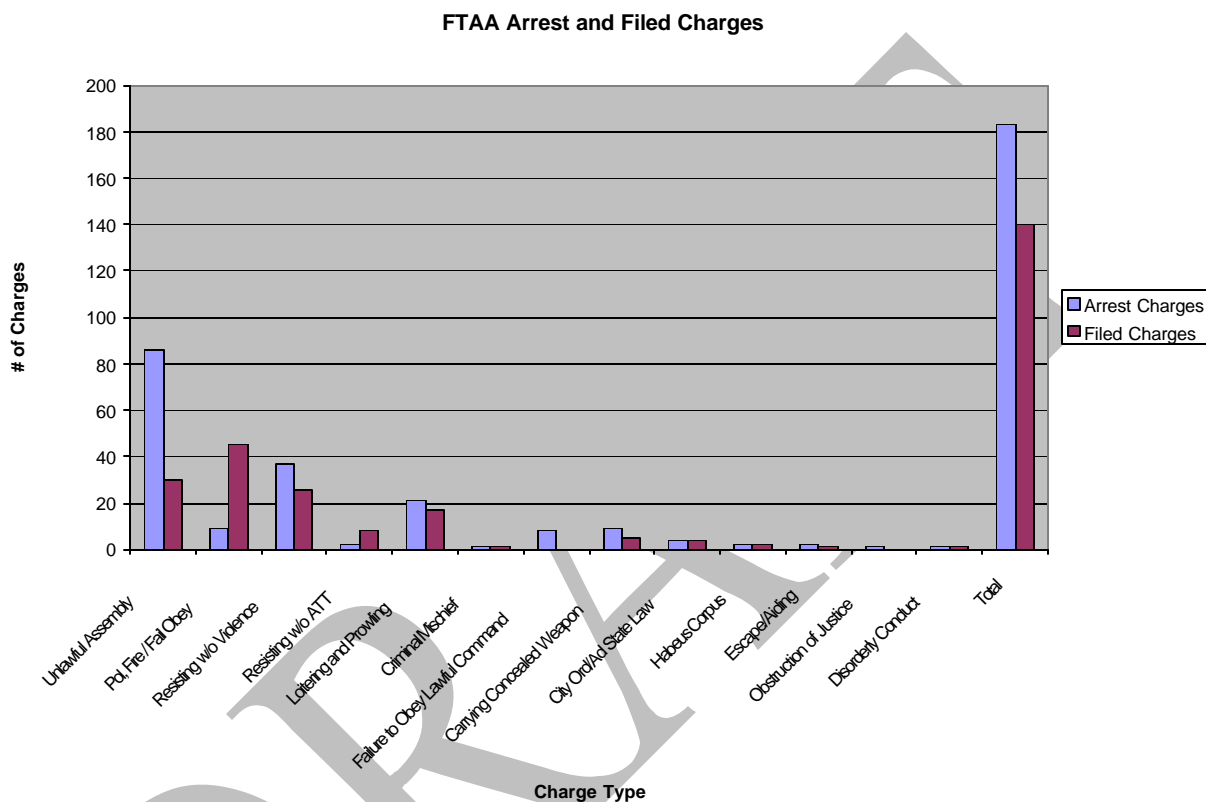
Major Knigge replied that officers are responsible for governing themselves in accordance with departmental Standard Operating Procedures (SOP). The command staff is responsible for investigating and/or responding to complaints. Both Major Knigge and Chief Kovacs said that they did not observe any misconduct and/or procedural violations during prisoner processing.

What were the arrest charges?

IRP staff was able to decipher the information on 121 of the Arrest Affidavits provided by MDPD; 62% had a "primary" charge of Unlawful Assembly, 17% Loitering and Prowling, 7% Resisting Without Violence and 6% Failure to Obey a Lawful Command, 2% Carrying a Concealed Weapon, and the remainder included Possession of Marijuana, Obstruction, Disorderly Conduct, etc. Some arrestees complained that they did not know why they were arrested. Apparently it is not a constitutional right to be advised of the charges at the moment of arrest, even though FSS 901.17 requires officers inform of authority and cause of arrest. The legal opinion suggests it is a "ministerial duty." Some were charged with "resisting" if they refused to give their name which, according to a legal opinion documented in the After-Action Report, is allowed. At a subsequent meeting of the Independent Review Panel, February 26th, it was clarified that during prisoner processing each arrestee received a copy of the Arrest Form (A form) with charges that formed the basis for the arrest.

What were the dispositions of the charges?

The MDPD After-Action Report states, "...most arrests made by MDPD officers resulted in probable cause findings by judges." Staff looked at 133 MDPD arrests made during FTAA week, resulting in 183 arrest charges and 140 charges officially filed by the SAO.



The following information regarding the 133 arrests was taken from the Criminal Justice Information System on 6/8/04:

| Nolle Prossed by SAO | Acquitted by Court or Jury | Deferred Prosecution Program | Dismissed by Court | Withheld Adjudication (Plea) | Pending | Incomplete Record |
|----------------------|----------------------------|------------------------------|--------------------|------------------------------|---------|-------------------|
| 69 | 7 | 13 | 2 | 16 | 17 | 9 |

Miami Activist Defense maintains "Legal Stats" at a website that reports convictions to date. (See www.stopftaa.org/legal) The State Attorney's Office has not responded to requests for disposition data.

How many people arrested were local? Out of towners?

An assessment of MDPD arrest forms provided to the IRP suggests that 13% of MDPD arrestees were from Florida and 5% gave a Miami address. 82% were from out-of-state or gave no address.

DRAFT

What Policy and/or procedure need to change?

The MDPD After-Action Report addresses this (section entitled “Prisoner Processing, Concerns and Recommendations” on p.12). Major Knigge added that the overall function of prisoner processing worked well. Chief Kovacs said he was present at the processing site from 12-14 hours a day. He commented that the site was well supervised and personnel were very professional.

Chief Kovacs said “to this day [2/9/04], the Department has received not one complaint” and he does not recommend any policy changes. Chief Mary Ann Puig, of C&R Professional Compliance Bureau (PCB), expressed that she checked the C&R complaint logs before and after the FTAA conference, from 11/11/03 to 12/9/03, and no complaints were received by C&R.

On 1/27/04 the IRP formally requested that C&R investigate allegations made by 5 Bates College students relating to handcuffing and the provision of water.

Detainee Decontamination

The Miami-Dade Fire Rescue HazMat Bureau provided a copy of its FTAA “Earlington Heights Decon” policy. Fire Rescue had Decon units in the field and a more complete facility at the Prisoner Processing Center.

Major Knigge said that any prisoner who exhibited signs of being exposed to chemicals, approximately 10-20 arrestees, received a “wash down” for decontamination.

One person who was arrested, Laura Ripple, stated in an article that she was stripped by members of the opposite sex during decontamination procedures. In a follow-up letter dated May 21, 2004, MDPD Legal Advisor Tom Guilfoyle stated that: “Prisoner decontamination and wash down were conducted by firefighters of the same gender as the prisoners.”

Tear gas was deployed on Thursday by the City of Miami Beach Police, according to testimony heard at the February 5th Miami Civilian Investigative Panel (CIP) meeting. However, the chemical used on Friday by MDPD was pepper spray. At a subsequent Use of Force Committee meeting, March 5, 2004, Major Battle clarified that in addition to the one OC canister mentioned above, 3 pepper balls were deployed as well.

Courts and Prisoner Processing

Ms. Antor asked about a statement in the MDPD After-Action Report Executive Summary, Page 6, which reads: “The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site.” No one present from MDPD or C&R was aware of any such policy or practice. C&R Acting Director Charles McRay stated that he was unaware of the basis for the quote.

The Administrative Office of the Courts responded to an inquiry about the statement by saying that the Court *increased* the number of bond hearings “to process arrested demonstrators in a timely fashion, rather than delaying their ability to quickly return to the conference site.”

Comments from the Floor: Steven Wetstein inquired about the early withdrawal of the Miami Dade Fire Department (MDFD) decontamination unit. Major Knigge replied that MDFD returned and were active before prisoners arrived at the processing site on Friday.

Juanda Ferguson stated she was on Biscayne Boulevard on Thursday, November 20, and she saw no misconduct by protesters or police officers. However, she did see on TV a citizen pushed down by a police officer in riot gear.

DRAFT

LABOR COMMUNITY CONCERNS

Department Reviewed: Miami-Dade Police Department

Committee Meeting Date April 15, 2004.

IRP Discussion Date: May 27, 2004

Committee: IRP Members: John Thornton, Esq., Committee Chairperson, Jorge E. Reynardus, Esq., Rev. James Phillips and Chief John S. Ross. IRP Staff: Eduardo I. Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; Duhamelle Desire, Conflict Resolution Specialist.

MDPD: Major Louis Battle, FTAA Operations Commander; Tom Guilfoyle, Esq., Legal Bureau; Sgt. Sheree Dibernardo, CAB.

Audience: Fred Frost, South Florida AFL-CIO President; Deborah Dion, AFL-CIO; Tony Fransetta, Florida Alliance for Retired Americans (FLARA) President; Larry Winawer, FLARA; Bentley Killmon, FLARA; Linda Romero, Field Representative Government Supervisors Association of Florida/OPEIU Local 100 AFL-CIO; Terry A. Coble, ACLU; Emilio Vazquez, representing US Senator Bill Nelson; Steven Wetstein; Donald F. March, Citizens Investigation Panel (CIP); Neil McCool; James B. Wright; Julia Trujillo.

Media: Chris McKinney, WSVN; Lazaro Lopez, WFOR; Michael Hibben, Miami Herald Radio; Jeffery Keating, Indy Media.

AFL-CIO Pre-FTAA Planning with the City of Miami

AFL-CIO representative Deborah Dion, and a local attorney, met 16 times between 8/28/03 and 11/18/03, with representatives from the City of Miami Police Department, City Attorney's Office and City Community Relations Board, to negotiate plans and agreements for AFL-CIO (and its coalition partners) events during the FTAA Ministerial. All AFL-CIO events had permits from the City of Miami.

The agreements included the following events scheduled for Thursday, November 20, 2003:

- 7:00 am - Training for Peacekeepers, Bayside Amphitheater
- 10:00 am - Pre-Rally for Florida Alliance for Retired Americans (FLARA), Bayside Amphitheater
- 12 Noon - Rally, Bayside Amphitheater
- 2:00 pm - March, Downtown Miami

The AFL-CIO written agreement with the City of Miami included:

- The closing of Biscayne Blvd, from Flagler to NE 4th St., to vehicular traffic on 11/20/03 from 10 am to 6 pm, with the exception of buses providing transportation to and from AFL-CIO events.
- The specific parade route.

The AFL-CIO verbal testimony identified the bus routes as follows:

- The route for 52 AFL-CIO buses: I 395 or I 95 to Biscayne Blvd (or 2nd Avenue) exit to the front of Amphitheater (drop-off and pick-up site). Buses park at Miami Arena and return to pick-up site after the march.
- The route for 24 FLARA buses: I 395 or I 95 to Biscayne Blvd. exit to Biscayne (or 2nd Ave) to 3rd St. access road behind Bayside Market Place. Drop-off site was the Bayside elevators/escalators near the Amphitheater. Buses park at Miami Arena and return via NW 2nd Ave. to the front of Amphitheater to pick-up Retirees at 2 pm, after the marchers left Bayfront. (Most retirees were not to march.)

The actual routes of the 76 buses on November 20

8 union buses got to Bayfront between 7 – 7:30 am.

2 FLARA buses unloaded from the access road, according to the agreed-on plan.

3 FLARA buses unloaded from Biscayne Blvd.

63 buses failed to reach Bayfront.

Several FLARA buses had to unload at increasing distances from Bayfront.

Several buses were stopped at the interstate 395 exit to Biscayne Blvd.

2 FLARA buses from Holiday, FL were told by police officers they could not enter and to go home. They never unloaded for the event.

Some buses circled around for several hours, attempting to find a way to get to Bayside.

No buses were allowed to pickup seniors at Bayside.

Testimony

Fred Frost, South Florida AFL-CIO President

Mr. Frost stated that AFL-CIO had about 15,000 people come to Miami to support Labor's position regarding FTAA agreements. There were 90 coalition partners. The police violated the first and fourth amendment rights of these people when officers in riot gear prevented them from gathering in permitted events. No one in this community accepts responsibility for what happened. Mr. Frost said many of these people are emotionally scarred for life, yet every police jurisdiction is saying: "Not our jurisdiction." No jurisdiction will accept responsibility for blocking access to the FLARA and AFL-CIO prearranged events on November 20.

Mr. Frost submitted a video which the AFL-CIO showed at a Civilian Investigative Panel Meeting. (Panel members present accepted it but did not play it. They had already seen it.)

Deborah Dion, AFL-CIO

The AFL-CIO spent ½ million dollars for FTAA activities, but the organizers do not want the money back. They want to know who was responsible for the disruption of AFL-CIO events scheduled for November 20.

Ms. Dion said that in her meetings with Miami officials, she was led to believe that the City of Miami was overseeing all jurisdictions involved in FTAA security, and that Miami representatives were communicating the results of these meetings with other jurisdictions. Ms. Dion stated that she was never told during these meetings that MDPD was responsible for a specific geographic area.

During the FTAA Ministerial, it was clear that on-site officers were not aware of the AFL-CIO agreements with the City of Miami. The rules changed with every shift change. Ms. Dion asked whether the Miami PD informed MDPD about the AFL-CIO bus operations and why MDPD stopped the buses.

Tony Fransetta, Florida Alliance for Retired Americans (FLARA)

Mr. Fransetta stated that his group did not come to march and protest, but to express their concerns in a seminar on how the FTAA would affect seniors. Mr. Fransetta said FLARA had "guaranteed special arrangements" for FLARA buses to drop off seniors behind Bayside, where they had escalator and elevators to access the Amphitheater. FLARA believed it had the cooperation of the departments policing the areas where the buses passed. FLARA complied with all requests officials made to ensure the smooth passage of the buses.

On the morning of November 20, a couple of buses arrived at the Bayside drop-off point and then police blocked further access. Mr. Fransetta said there was no discernable reason or visible action that caused the plan to be shut down at this time.

MDPD prevented buses from exiting I-395, told a couple buses to go back home, and told others there was a perimeter and vehicles were not allowed in. Some people got off the buses and walked.

After the AFL-CIO march, FLARA buses were denied access to pick up seniors from Bayfront and no one would tell the seniors where the buses were.

Mr. Fransetta stated that, to date, no one in the County has addressed the treatment of the seniors during the FTAA Ministerial, and “whoever ordered the disruption of the seniors’ plan, has to apologize publicly.” He asked that the person who made the decision to block the buses be identified. Mr. Fransetta stated the City and the County “trashed” an event that cost \$41,000 and many months planning. There was no way the police could have confused the seniors with the anarchists or terrorists.

Mr. Fransetta stated that, after being treated at the hospital for dehydration, he took a taxi to his hotel, the Holiday Inn across from Bayfront. When he showed the officer at the door his room key and identification band from the hospital, and said he needed to lie down, the officer told him: “Leave or go to jail.” Mr. Fransetta felt it was criminal for those in authority to psych officers up to believe that protesters were coming to destroy the city.

Larry Winawer, FLARA Retiree Organizer

Mr. Winawer was responsible for the coordination of the 24 retiree buses. There was an agreement with the Miami PD to drop off seniors on the access road behind Bayside so they could walk through Bayside to the Amphitheater. Two FLARA buses were granted access to drop off retirees at the agreed-on drop-off point; three FLARA buses dropped off passengers in front of Bayside. No buses were allowed to pick seniors up from Bayside. As a result, seniors had to walk through a frightening maze of riot-gear police in an attempt to locate their buses.

As Mr. Winawer was assisting seniors to find their buses after the parade, he encountered FLARA member Bentley Killmon. He and Mr. Killmon were walking east on NE 5 St. toward Biscayne Blvd. and the Holiday Inn (Biscayne Blvd. and NE 3 St.) where Mr. Winawer was staying. They were stopped by police at the corner of NE 5 St and 2 Ave., and “funneled north.” Just past NE 2 Ave. and 6 St., a 45 degree line of MDPD officers blocked access north and east. They were forced west along the railroad tracks, along with about 13 other citizens scattered in an area about the size of a football field. At the same time about 50 Broward Sheriffs Office (BSO) officers, clad in riot gear with guns drawn, marched east on the railroad tracks and forced everyone to the ground. BSO arrested about 15 people, held them handcuffed in BSO vans for about 3 hours and then transported them to the Earlington Heights Processing Center.

Mr. Winawer recalls that a man named “Ricky” soiled himself after begging for medical attention for pain in his shoulder. He believes the incident happened in the Prisoner Processing Center.

Mr. Winawer stated that he was handcuffed behind his back for about 7 hours and in front for 5 hours. He described the time from arrest to release as follows:

5:00 pm Arrest
8:30 pm Prisoner Processing Center
12:30 am Jail
5:30 am Booking completed
5:00 pm Released

Bentley Killmon

Mr. Killmon stated that, on the afternoon of November 20, he asked many police officers for the location of the buses and none would respond. When he was arrested by BSO, he provided his name several times. At the Prisoner Processing Center he showed his Drivers License, yet he was identified as “John Doe” on the Arrest Affidavit. Mr. Killmon said he was handcuffed behind his back for 7 ½ hours and was without water for 10 hours. Water was not provided until one hour after he arrived at the Turner Guilford Knight Center (TGK.) He saw no one go to the bathroom or drink water while he was at the Prisoner Processing Center.

During the prisoner processing, Mr. Killmon heard a Black prisoner, wearing an AFL-CIO vest, complain about severe pain in his shoulder. No one responded to his pleas for relief. He finally lost control of his bladder. Mr. Killmon is not sure whether this happened in the BSO van, in the Processing Center or on the way to TGK.

Major Louis Battle, Commander of MDPD Special Patrol Bureau

The Special Patrol Bureau handles all pre-planned and spontaneous events within Miami-Dade County. The Tactical Operations for spontaneous events include SWAT, K-9 and the Bomb Squad. His Bureau also does all the strategic planning for major Miami-Dade County events. Major Battle was involved in over 80 FTAA meetings, many with the City of Miami Police Department.

Major Battle stated that for the FTAA: “I am the person; the buck stops with me.” Major Battle:

- drafted the operational plan to train all the Miami-Dade police officers,
- created a philosophy as well as policy and procedures, and
- executed the operational plan.

Major Battle stated that he gave the commands, including the commands to shut down Metrorail, Metromover and roads, and he is “comfortable” with MDPD’s performance during FTAA week. Major Battle expressed regret for the bus problems but added he would rather be chastised for having an overwhelming force of police officers on the road than for allowing seniors to be bused into the middle of a violent confrontation and get hurt because the police didn’t do their job.

Major Battle stated he cannot answer for the City of Miami. Miami PD was the lead law enforcement agency and they brought over 30 other police departments under their umbrella. MDPD did not work under the Miami PD umbrella, but agreed to handle a specific geographic area. MDPD was in command and control of its own assets, while Miami PD handled its department and the other police agencies. There were two law enforcement operations going on during FTAA week and they were very different. MDPD assisted Miami PD but was not under MDPD command. MDPD was not specifically involved in Miami PD planning and decision-making.

Major Battle described the City’s plan as follows:

The four largest groups were the City of Miami Police, Miami-Dade Police, Florida Highway Patrol (FHP), and Broward Sheriff’s Office (BSO). FHP, BSO, some municipalities, as well as some federal and state agencies, worked under the Miami PD umbrella.

The City covered the Miami River, up to NE 6 St., including the Hyatt and the Intercontinental Hotel. The Intercontinental was the meeting site for the trade ministers. The Hyatt was the meeting site for the American Business Forum. Miami PD secured the conference sites in the downtown area with a large mass of police officers and a “hard fence line;” they called it their “hard perimeter.” That was complemented with field forces, fixed posts and bicycle patrol. Miami PD ran a soft perimeter from about Flagler St. up to NE 6 St.

Miami PD dealt with parade routes and permits for demonstrations and events. The Bayfront Amphitheater was the main demonstration site. The Miami Arena was the staging area.

The Miami perimeter was surrounded by other jurisdictions:

BSO: West of I-95 and north of I-395. BSO and the City of Miami entered into a specific mutual aid agreement for the FTAA event.

FHP: South of the Miami River—the Brickell Financial Corridor and the interstates—I-95 and I-395.

MDPD: North: NE 4 St to NE 12 St. (Under I-395); from the Bay to I-95. MDPD and Miami PD overlapped from NE 4 St. to NE 6 St. The MDPD area included the port and the AAA Arena.

Major Battle stated that the City, intel and the media were all advising that there would be 30,000 to 100,000 protesters. A lot of planning was “intel driven,” based on what might happen. Everyone was drilled with “anarchists, anarchists, anarchists.” One thing learned from FTAA meetings in Washington and Cancun was to keep conference attendees in the conference site area, so police could lock down the conference site and the conference would not be interrupted. This meant that other sites became viable targets, such as the airport, seaport, the train stations, the courthouse, the jail, the hospital, and the Government Center.

On Thursday morning, MDPD received “Intel” that some of the anarchists’ websites had posted a Call to Action: Be at the Government Center [One-Eleven Building] at 7 am. When MDPD Officers arrived at 6 am, demonstrators were already showing up. Rather than shut down the non-permitted demonstration, Major Battle met with the protest leaders. He allowed them to protest around the One-Eleven Building, including the street, the courtyard and the park on the west side.

The protest continued without incident for about an hour and then there was provocation. Demonstrators began pushing on the officers’ lines and on their shields. Major Battle walked between the demonstrators and the officers, trying to keep the police line straight, the officers were composed. Supervisors walked behind the officers saying, “Hold the line. Hold the line.” MDPD officers held their line, showed their discipline and no one was arrested.

Then the protesters moved to the City of Miami fence line. Ten minutes later, the same demonstrators that had not left a piece of graffiti or a piece of litter at the One-Eleven Building, were throwing grappling hooks on the fence. Gas was dispersed, officers had paint thrown at them, tear gas was thrown into the crowd, fires were set, and barricades were in the street. There was a “pitch battle” up and down Biscayne Boulevard for about two hours. Miami PD asked that MDPD take a position on NE 3 St., a block south of its regular perimeter.

MDPD held a north lateral line on Third Street and locked down the Boulevard from NE 4 St. to NE 12 St. No traffic was allowed east of NE 2 Ave., but MDPD did not stop vehicular or pedestrian traffic at any time on Third Street. NE 2 Ave., NE 1 Ave. and Miami Ave. were open arterials to Third Street, where demonstrators could have turned east to the Amphitheater.

Later Major Battle said *he* did not shut down Third Street eastbound, but he did not know if the City or BSO might have.

Major Battle said he was aware that AFL-CIO buses were going to drop off people at the Amphitheater, but he did not know that senior buses had specific drop-off points. He added that the City was fighting a violent group, and they probably should have contacted whoever was driving the buses to tell them: ‘We’ve got a violent confrontation going on.’ The City Command Post probably had a roster of the bus drivers with cell phones. The communications aspects of a plan are often just as important as the logistical and the operational aspects of a plan.

After the AFL-CIO March in the afternoon, another violent confrontation began between Miami PD and some protesters on Biscayne Blvd., from Flagler to about NE 3 St. Miami PD, with the help of BSO, pushed the crowd west to NE 2 Ave. and then north on 2nd Avenue. Major Battle saw dumpsters being pushed in the street and lit on fire. He saw rocks and bottles. Major Battle lined up his officers on NE 2 Ave. He did not know that the violent crowd was being pushed down NE 1 Avenue as well. MDPD had no direct communication with BSO. He communicated with Miami PD through the Command Post.

Major Battle stated that BSO and Miami were pushing people north on Second and First Avenue. He did not order his officers to push people west along railroad tracks where they would be trapped, but he could envision the field force commander, seeing a violent crowd coming up Second Avenue, make a decision to box them in.

Appreciation: At the end of the meeting, both IRP members and representatives of the AFL-CIO and FLARA thanked Major Battle for his forthright presentation.

Linda Romero, Field Representative, Government Supervisors Association of Florida/OPEIU Local 100 AFL-CIO (Provided to IRP staff on 4/21/2004)

Ms. Romero was an AFL-CIO Field Marshall on Thursday, November 20. After the AFL-CIO march, about 3:30-4:00 PM, she was at the foot of “the hill” by the amphitheater. People, including seniors and children, were standing around and sitting on the lawn, having a good time. Then she heard drums and she saw a police line marching north on the Boulevard, toward her. She heard popping sounds, screaming and saw puffs of smoke. She could not see what caused the police advance.

Ms. Romero called City Commissioners Regalado and Winton because she saw the police line advancing toward demonstrators who were doing nothing wrong. Ms Romero saw no violence toward the police and she heard no dispersal orders. She estimated that 95% of the people who were “swept up” by officers had no idea what was going on. Many of them were like “gawkers” at an auto accident. If they had been told to move, they probably would have moved.

Ms. Romero also called Chief Timoney’s office and spoke with Major Roell because no one could locate the buses that were supposed to pick up the senior citizens. According to Major Roell, the buses were supposed to be on NE 2 Ave., possibly at 2nd, 3rd or 4th Streets. Ms. Romero sent people north to avoid the approaching police line, but then she saw police marching south on the Boulevard. She tried to direct people toward 2nd Avenue where the buses were supposed to be, but the police had that blocked as well. She was with a group of about 100 people who avoided the police sweep by entering, or standing next to, the amphitheater.

Ms. Romero and a friend, Dawn Addy, left the area after the police line passed. They were advised by Deborah Dion to remove their union vests. Ms. Romero stated that she believes officers were targeting people who participated in the AFL-CIO march, because earlier in the week, during an AFL-CIO conference, Miami PD was “very present in our face.” They were very intimidating and wanted to “teach us a lesson.”

Ms. Romero stated she found it difficult to believe Major Battle's lack of knowledge about the buses. The AFL-CIO participated in many meetings during the planning process. Miami PD, Miami CRB, MDPD and Miami-Dade CRB were all represented at one time or another. The buses and the removal of people after the march were discussed in one of the meetings. The AFL-CIO wanted to avoid what happened in Seattle: violent protesters hiding among the peaceful union people after the march.

Ms. Romero's only encounter with MDPD on that afternoon, to her knowledge, was with MDPD intelligence officers who tried to get her to identify the hotel where the union marshals and trainers were staying.

AFL-CIO Questions

1. Did the MPD notify the Miami-Dade police about the AFL-CIO bus operation?

Major Battle said he was aware that AFL-CIO buses were going to drop off people at the Amphitheater. He did not know that seniors (FLARA) were on several of the buses or that there was a specific route for the senior buses.

2. Who gave the order to stop the buses?

The evidence does not support that there was a specific order to stop the buses. MDPD and Miami PD locked down certain streets to control aggressive demonstrators. MDPD held a north lateral line on Third Street and locked down the Boulevard from NE 4 St. to NE 12 St. MDPD did not block exits from I-95 or I-395. No traffic was allowed east of NE 2 Ave., but MDPD did not stop vehicular or pedestrian traffic at any time on Third Street, although Miami PD may have.

3. Did the MPD inform the Miami-Dade police that there was peacekeeper training at the Amphitheater on November 20 at 7:00 am?

There was no testimony that MDPD knew about the peacekeeper training.

4. Did the Miami-Dade police know that the AFL-CIO had peacekeepers?

There was no testimony about MDPD's knowledge of AFL-CIO peacekeepers.

5. On November 20, at 7:00 am Biscayne Blvd. and adjacent streets were lined with police officers in riot gear – later about 9:00 am the police presence was even greater. Who gave the order for different jurisdictions to move in position, including the Miami-Dade police? And more importantly why?

Major Battle gave the orders for MDPD. Major Battle's primary mandate was to protect people and not allow innocent bystanders to wander into an area where there were violent confrontations. Major Battle shut down streets whenever there was "intel" of a pending act or something was already occurring.

All other jurisdictions were under the direction of Miami PD Chief Timoney.

6. AFL-CIO staff members were unable to access their communications truck, parked between 3rd and 4th Streets on Biscayne Blvd. 400 cases of bottled water and two thousand signs were also at this site. Miami-Dade police blocked access to the Biscayne Blvd. median. Why and who gave the order? Why did the AFL-CIO get no explanation of what was going on?

Major Battle said the group in the communication truck was “the happiest, friendliest group of people out there that day.” They never communicated there was a problem.

7. The AFL-CIO march route was cut short with no explanation. They were not able to go past Flagler. What did Miami PD communicate to MDPD when the AFL-CIO started leaving Bayfront and marching up Biscayne toward 3rd street?

Major Battle acknowledged that MDPD blocked the pre-arranged parade route at Biscayne and 3rd St. because the night before, Miami PD Captain Thomas Cannon asked him to move to Third Street and block the north side of Third. Captain Cannon told Major Battle that he told the AFL-CIO they were not “going to Fourth Street.” Miami Police blocked the parade at Flagler.

8. On November 20th at 4:00 pm the marchers were coming back to Bayfront for a finale. They were trying to locate their retiree buses and other buses as well as trying to reach the Miami PD to see if they would allow the buses to pick up folks in front of Bayfront. This did not happen.

MDPD had no jurisdiction over Miami PD or the perimeters it established. Biscayne Blvd was closed to vehicular traffic by MDPD and Miami PD. An October 30, 2003 letter from Miami Major Thomas Roell to the AFL-CIO attorney confirms that Miami PD closed Biscayne Blvd. to vehicular traffic on 11/20/04 from 10 AM to 6 PM, however buses were permitted “to drop off and pick up AFL-CIO event participants.” The MDPD perimeter on the north side of NE 3 St. and on NE 2 Ave. blocked access to Bayfront from NE 4th Street and streets north.

9. At approximately 4:30 pm protesters gathered in front of the fence line on Flagler and all of a sudden Miami police officers shot off tear gas and started advancement up Biscayne Blvd toward 3rd street. The advancement happened quickly. AFL-CIO was trying to get their people out of Bayfront and moving toward the port. The advancement included officers firing tear gas, rubber bullets and pepper spray as well as hitting protesters with clubs.

The MDPD Command Post Log indicates this action was taken by Miami PD:

3:52 pm Large group (approximately 400) at 2nd and Biscayne. City deployed gas.
3:55 pm Crowd running northbound up Boulevard.
3:56 pm City deployed pepper spray and pepper balls.

10. Where was the Miami-Dade Police during this advancement?

On November 20, between 4 pm and 6 pm, MDPD had Biscayne Blvd. blocked from NE 4th St. to 12th St. Officers were stationed on the north side of NE 3 St., along NE 2 Ave. and throughout the area under MDPD command.

11. Why were Broward officers arresting people in a Miami-Dade jurisdiction?

Downtown Miami was divided into three geographical jurisdictions, but that did not preclude crossing over jurisdictions when necessary to maintain control.

12. Mayor Penelas said he would have the Miami-Dade police conduct an internal investigation and report back their findings. As of April 13, nothing had been heard from Mayor Penelas.

On February 13, 2004, Miami-Dade Mayor Alex Penelas met with Fred Frost and Deborah Dion, from the AFL-CIO, and Larry Winawer and Tony Fransetta from FLARA. Also present were former MDPD Director Carlos Alvarez, Chief Randy Heller and representatives from the ACLU. Following that meeting, Mr. Frost sent Mr. Penelas a letter thanking him “for directing the Miami-Dade Police Department investigate specific incidents of abuse that might have taken place at the hands of Miami-Dade police officers.”

In a May 11, 2004 letter to the IRP, Police Legal Advisor Thomas Guilfoyle addressed Mr. Winawer’s concerns: “Chief Heller and I subsequently determined that the allegations did not fit within the parameters for investigation by the Professional Compliance Bureau. However, Chief Heller did direct the Special Patrol Bureau to investigate Mr. Winawer’s complaint. It was determined that he was arrested by Broward Sheriff’s Office... I believe we addressed all [AFL-CIO] concerns” at the IRP Labor concerns Committee Meeting.

13. On January 30th Fred Frost requested several documents from the Miami-Dade police. He received a response from the Assistant County Manager stating that they were in the process of putting together the documents -- Fred Frost still has not received any information from the Miami-Dade Police Department.

It is a fact that, as of May 11, 2004, Mr. Frost had not received a response to his public records request. In a February 10 letter to Mr. Frost, Assistant County Manager Susanne Torriente stated: “We are in the process of gathering the specific information you requested.” In a May 11, 2004 letter to the IRP, Police Legal Advisor Thomas Guilfoyle wrote: “we will follow up on the request.”

14. Miami-Dade was blocking the planned parade route at Biscayne at NE 3 St. Did Miami Captain Thomas Cannon tell MDPD to block the area?

Yes. The AFL-CIO march was supposed to exit the amphitheatre, go north on the Boulevard to Fourth Street, make a U-turn go down to Third Street and go west. The night before,

Captain Cannon asked MDPD to block the north side of Third Street. Captain Cannon told Major Battle that he had told the AFL-CIO that they weren't going up to Fourth Street.

Other Questions

15. What is the responsibility of MDPD officers and supervisors who witness unlawful arrests?

Testimony indicates that MDPD prevented a group of about 15 people, walking north on NE 2 Avenue, from turning east on arterials leading to Biscayne Blvd., from 3rd St. north. MDPD directed them to turn west on the railroad tracks, where they encountered BSO in riot gear with guns drawn. BSO "swept them up."

If, in fact, MDPD officers directed citizens to go west on the railroad tracks, and MDPD officers witnessed BSO arrest those people, even though the officers saw no probable cause to arrest, what is the responsibility of the MDPD officers or their supervisors, who witnessed the arrests?

Major Battle said Mr. Winawer met with Chief Erched or Chief Heller about this matter and they were looking into it. Mr. Guilfoyle will look into it and stated that he believes IA is investigating two FTAA related complaints.

16. What instructions were given to MDPD officers regarding communication with protesters or other citizens?

Major Battle stated officers were instructed to remain where posted and be disciplined. Supervisors were walking behind the line of officers and, if any questions arose, a supervisor responded immediately. No directions were given to not communicate with people.

17. What did MDPD know about AFL-CIO plans?

MDPD only knew what Miami PD told them and no written details as to bus routes and specific drop-off plans were provided. Both Deborah Dion and AFL-CIO attorney Libby Herrera-Navarrette, in a later phone conversation, stated that no MDPD representatives were present in AFL-CIO meetings with City officials. They assumed that City officials were communicating with MDPD as well as other jurisdictions.

18. Who was the Field Force Commander closest to BSO on the afternoon of November 29th?

MDPD identified two Lieutenants: Jack Solomon and Robert Brown. Lt. Solomon was directed to prevent any persons from going east of NE 2 Avenue near the railroad tracks. Lt. Solomon recalled that individuals were proceeding east along the railroad tracks, followed by BSO officers. Lt. Brown had a discussion with the BSO officers but did not interfere with the arrests.